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# TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for October 26, 2006

Appointed as Justice of the 7th Court of Appeals, Place 3, for a term until the next General Election and until his successor shall be duly elected and qualified, Patrick A. Pirtle of Amarillo. Judge Pirtle is replacing Justice Don H. Reavis who resigned.

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2008, Garry Edward Eoff of Brownwood (Reappointment).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2008, Carl A. Montoya, Ed.D. of Ingleside (Reappointment).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2008, Jane A. Wetzel of Dallas (Reappointment).

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Arabia Vargas of Helotes.

Appointed to the Governor's Criminal Justice Advisory Council for a term at the pleasure of the Governor, D. Pat Johnson of Austin. Mr. Johnson is replacing Ron Urbanovsky who retired.

### Appointments for November 1, 2006

Appointed as the Canadian River Compact Commissioner for a term to expire December 31, 2009, Richard McDonald, Ph.D. of Amarillo. Dr. McDonald is replacing Roger Cox whose term expired.

Appointed to the State Board of Examiners for Speech-Language and Pathology and Audiology for a term to expire August 31, 2011, Sonya Salinas of Mission (replacing Cheryl Sancibrian of Lubbock whose term expired).

Appointed to the State Board of Examiners for Speech-Language and Pathology and Audiology for a term to expire August 31, 2011, Vickie B. Dionne, Au.D. of Nederland (replacing Dr. Deborah Carlson of Houston whose term expired).

Appointed to the State Board of Examiners for Speech-Language and Pathology and Audiology for a term to expire August 31, 2011, Patricia Elaine Brannon of San Antonio (replacing Bertha Campbell of Houston whose term expired).

Appointed to the Texas Real Estate Commission for a term to expire January 31, 2011, John D. Eckstrum of Montgomery (replacing Lawrence Jokl of Brownsville whose term expired).

Appointed to the Texas Real Estate Commission for a term to expire January 31, 2011, Tom C. Mesa, Jr. of Deer Park (replacing Ramon Cantu of Houston whose term expired).

Appointed to the Economic Development Corporation for a term at the pleasure of the Governor, Scott Johnson of Frisco.

Rick Perry, Governor

TRD-200606049



## Proclamation 41-3060

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my October 23, 2006 proclamation to include Brazoria County certifying that severe storms and flooding that began on October 15, 2006, and continuing has caused a disaster in this county.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 30th day of October, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200606050



# THE ATTORNEY GENERAL

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

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## Opinions

### Opinion No. GA-0474

The Honorable Robert R. Puente

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Appropriate construction of Local Government Code chapter 373A authorizing a city to establish homestead preservation districts and reinvestment zones (RQ-0471-GA)

### SUMMARY

Local Government Code chapter 373A enacted in 2005 provides for the creation of homestead preservation districts and homestead reinvestment zones. Section 373A.108's tax exemption applies to land trust real property owned by a community housing organization or a housing finance corporation operating as a land trust in a homestead preservation district only if the real property is inside the district. The exemptions provided by Tax Code sections 11.182 and 11.1825 and by Local Government Code section 394.905 do not apply to such property inside the district.

A city creating a homestead reinvestment zone is not authorized to establish a termination date for the zone. Additionally, a city and a participating county are not authorized to execute an agreement that requires the county to deposit its tax increments into the zone's tax increment fund for a period exceeding one year and under which the county does not have the right to annually reconsider its participation in the zone. Finally, the tax increment fund revenues may be used only to purchase real property, construct or rehabilitate housing units in the zone, and pay zone and housing-related administrative expenses.

A family's income eligibility to receive a benefit from a homestead preservation reinvestment zone tax increment fund under Local Government Code section 373A.157(b) may be determined in accordance with the United States Department of Housing and Urban Development's family income eligibility rules codified at part 5 of title 24 of the Code of Federal Regulations. Additionally, the section 373A.157(b) median family income eligibility determination is required only for the year in which the family is granted a housing benefit from the tax increment fund.

### Opinion No. GA-0475

The Honorable Tamara Y.S. Keener

Gillespie County Attorney

125 West Main, Suite L41

Fredericksburg, Texas 78624

Re: Gillespie county attorney's authority to use money in the hot check fund to sponsor a children's book (RQ-0473-GA)

### SUMMARY

The Gillespie County Attorney may use money in the attorney's hot check fund to sponsor a children's book if the book is related to the attorney's official business and no other law prohibits such an expenditure.

### Opinion No. GA-0476

The Honorable Michael A. Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether the Texas Department of Family and Protective Services may contract with a governmental entity to provide substitute care and case management services (RQ-0475-GA)

### SUMMARY

Under the terms of Senate Bill 6, Seventy-ninth Legislature, the Department of Family and Protective Services may not contract with a governmental entity for the provision of substitute care and case management services except for emergency services or as a service provider of last resort. In a region that has an independent administrator to procure substitute care and case management service providers, the independent administrator may not contract with a governmental entity to provide such services. Notwithstanding the privatization of substitute care and case management services, a governmental entity may continue to provide community services to the extent authorized by other law.

### Opinion No. GA-0477

The Honorable Allan Ritter

Chair, Committee on Economic Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re Whether the Open Meetings Act requires specific notice of a non-binding vote on a "personal endorsement" motion (RQ-0477-GA)

#### **S U M M A R Y**

To comply with the Open Meetings Act (the "Act"), a city must give advance notice that it will consider the topic of a "personal endorsement" motion. The city may specifically state in the notice that a personal endorsement motion will be considered for adoption but is not required by the Act to do so unless the city's meeting notices routinely indicate when a motion or resolution will be adopted. If adoption of the personal endorsement motion was invalid because it violated the Act's notice provisions, the invalid action may be cured by readopting the motion at a subsequent meeting after giving adequate notice. The motion would be effective only from the date of its readoption.

#### **Opinion No. GA-0478**

The Honorable J. Keith Meredith  
Freestone County and District Attorney  
118 East Commerce, Room 305  
Fairfield, Texas 75840

Re: Authority of a Type A general-law municipality to annex land outside its extraterritorial jurisdiction (RQ-0480-GA)

#### **S U M M A R Y**

Under sections 42.021 and 43.051 of the Local Government Code, a Type A general-law city with fewer than 5,000 inhabitants is authorized to annex territory it does not own only if the territory is in the city's one-half mile extraterritorial jurisdiction.

Sections 43.054(b)(1) and 43.0545(a) of the Local Government Code do not conflict but instead serve different purposes. Section 43.054 imposes size restrictions on the territory to be annexed, while section 43.0545 imposes size restrictions on the portion of the municipal territory that establishes the extraterritorial jurisdiction in which the territory to be annexed is located.

#### **Opinion No. GA-0479**

The Honorable Jeri Yenne  
Brazoria County Criminal District Attorney  
County Courthouse  
111 East Locust, Suite 408A  
Angleton, Texas 77515

Re: Application of chapter 706 of the Texas Transportation Code, which permits a political subdivision to contract with the Texas Department of Public Safety to provide information necessary for the department to deny renewal of the driver's license of a person who fails to appear in court or fails to pay or satisfy a judgment ordering payment of a fine and costs (RQ-0481-GA)

#### **S U M M A R Y**

The failure to appear system is not limited to traffic tickets. It is available for *all* offenses that arise in a justice or municipal court. On the other hand, unlike the failure to pay fines and costs, the failure to appear system may not be used for offenses that arise in any other court.

#### **Opinion No. GA-0480**

The Honorable Joel D. Littlefield

Hunt County Attorney  
Post Office Box 1097  
Greenville, Texas 75403-1097

Re: Whether a deputy sheriff may use a county patrol vehicle to perform off-duty security work (RQ-0482-GA)

#### **S U M M A R Y**

Article III, section 52(a) of the Texas Constitution prohibits the state and its political subdivisions from granting a thing of value for private use. An exception is made where the grant's predominant purpose is to accomplish a public purpose, not to benefit private parties; where there is public control over the assets to ensure that the public purpose is accomplished and to protect the public's investment; and where the public receives a return benefit. Thus, a sheriff may authorize the sheriff's deputies to use county patrol vehicles for off-duty employment without reimbursing the county only if the predominant purpose is to conserve the peace within the county, the sheriff retains control over the vehicles in a manner that ensures the peace will be conserved, and the county actually receives this public benefit.

There is no authority for a sheriff or a commissioners court to contract with a deputy sheriff to guarantee reimbursement to the county for the deputy's private use of a county patrol vehicle. Thus, neither a sheriff nor a commissioners court may set a rate for reimbursement.

The sheriff, and not the commissioners court, is responsible for seeing that the sheriff's deputies use patrol vehicles only for lawful purposes.

#### **Opinion No. GA-0481**

The Honorable David A. Castillo  
52nd Judicial District Attorney  
Post Office Box 919  
Gatesville, Texas 76528-0919

Re: Whether a city may use the proceeds of certificates of obligation for a water system improvement project that is different from the one contemplated when the certificates were issued (RQ-0483-GA)

#### **S U M M A R Y**

The City of Copperas Cove (the "City") may use the proceeds of \$8,400,000 Combination Tax and Revenue Certificates of Obligation, Series 2001, formally issued for "improvements to the City water and wastewater system" for any such improvements. Although representations of an issuer's governing body outside the formal authorizing documents may limit the use of proceeds in certain circumstances, an attorney general opinion cannot determine whether the proceeds of any particular securities have been so limited.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200606114  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 8, 2006

◆ ◆ ◆

# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

**AOR-537.** The Texas Ethics Commission has been asked to consider whether an incorporated local organization that is a member of an incorporated statewide organization may make donations to charities that match the amount of political contributions made by individual members of the local organization to the statewide organization's general-purpose political committee.

If the commission does not approve a dollar-for-dollar match, the requestor asks whether a match of a lesser amount would be permissible.

The request letter states that the statewide organization: (1) is exempt from taxation under section 501(c)(6) of the Internal Revenue Code, (2) has a membership that consists of dues-paying organizations, and (3) represents the interests of seven million individuals who are members of the dues-paying organizations.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following

statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200606085

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: November 6, 2006

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

##### 13 TAC §31.11

The Texas Commission on the Arts adopts on an emergency basis new §31.11, relating to Gifts, Grants, and Donations. This rule is needed to meet the requirements of Texas Government Code §2255.001, which requires that each state agency that has authority to accept gifts or grants have a rule establishing procedures to govern how such gifts and grants are handled by the agency. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts new §31.11 for permanent adoption.

This section is adopted on an emergency basis to comply with the Sunset Advisory Commission's recommendations and with the input of the Attorney General's Office.

The new rule is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other codes, articles or statutes are affected by this new rule.

##### §31.11. Gifts, Grants, and Donations.

(a) The Commission may accept gifts, grants, or donations from an individual, a foundation, corporation, estate, or other legal entity.

(b) The acceptance of all gifts, grants, or donations is subject to the final approval of the Commission.

(1) A list of all gifts, grants, or donations received by the Commission since the previous Commission meeting will be placed on the Commission agenda for approval.

(2) Supporting documentation describing each gift, grant, or donation will be provided to the Commission.

(3) Gifts, grants, or donations requiring matching funds will only be accepted to support activities for which the Commission has a corresponding legislative appropriation authority.

(4) Gifts, grants, or donations are required to be publicly acknowledged and may not be made on an anonymous basis.

(5) Gifts, grants, and donations may be made to the Commission's Operating Fund (0334) or to the Texas Cultural Endowment Fund.

(c) Restricted Gifts.

(1) Restricted gifts are those gifts that are required by the donor to be used for a specific purpose, program, or function.

(2) The Commission recognizes the importance of accepting restricted gifts. Restricted gifts provide the opportunity for a donor and the state to realize immediate benefits from a contribution toward the fulfillment of the Commission's mission of developing a receptive climate for the arts. The Commission will consider each gift on a case by case basis.

(3) Restrictions on gifts must be consistent with the mission, purpose, legal authority, and goals of the Commission.

(4) Restricted gifts may be given for the following purposes:

(A) Further the Commission's established grant programs;

(B) Further the Young Masters program;

(C) Further arts education initiatives;

(D) Further art opportunities to a broad segment of the state's underserved population;

(E) Support a geographic area of the state; or

(F) Support a particular artistic discipline or genre.

(G) Any other purpose authorized by law.

(5) The Commission will not accept restricted gifts intended for the sole benefit of a single organization.

(6) Any organization receiving a grant/contract as a result of a restricted gift must provide evidence of sound administrative and fiscal management practices, comply with the Commission's general eligibility rules and guidelines, and meet the requirements of the restrictions placed on the gift by the donor.

(7) Any organization receiving a grant/contract as a result of a restricted donation must provide acknowledgment of receipt of the gift from the donor and the Commission as appropriate.

(d) No employee of the Commission may serve as an officer or director in any organization making donations to the Commission.

(e) Gifts, grants, or donations to the Commission may not be used for the supplementation of the salary of any employee of the Commission.

(f) The Commission will not accept donations or gifts from an organization or individuals administering grants from the Commission or which have projects undergoing review by the Commission.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606071

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: November 6, 2006

Expiration Date: March 5, 2007

For further information, please call: (512) 936-6564



## CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

The Texas Commission on the Arts adopts on an emergency basis the repeal and replacement of §35.1 and §35.2, concerning A Guide to Operations, Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes the repeal and replacement of §35.1 and §35.2 for permanent adoption. Additionally, the Texas Commission on the Arts contemporaneously withdraws the previously published emergency repeal and replacement and proposed repeal and replacement which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7208).

The withdrawal and re-proposal are necessary because the information within the adoption by reference material located within §35.1, A Guide to Operations and §35.2, A Guide to Programs and Services has been updated. However, the text of the actual rules has not changed.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended November 2006.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

### 13 TAC §35.1, §35.2

*(Editor's note: The text of the following sections adopted for repeal on an emergency basis will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other code, article, or statute is affected by the repeal.

§35.1. *A Guide to Operations.*

§35.2. *A Guide to Programs and Services.*

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606074

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Effective Date: November 6, 2006

Expiration Date: December 22, 2006

For further information, please call: (512) 936-6564



### 13 TAC §35.1, §35.2

The new sections are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other code, article, or statute is affected by the new rules.

§35.1. *A Guide to Operations.*

The commission adopts by reference A Guide to Operations (revised November 2006). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at [www.arts.state.tx.us](http://www.arts.state.tx.us).

§35.2. *A Guide to Programs and Services.*

The commission adopts by reference A Guide to Programs and Services (revised November 2006). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at [www.arts.state.tx.us](http://www.arts.state.tx.us).

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ricardo Hernandez

Executive Director

Texas Commission on the Arts

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

##### 13 TAC §31.11

The Texas Commission on the Arts proposes new §31.11, relating to Gifts, Grants, and Donations. This rule is needed to meet the requirements of Texas Government Code §2255.001, which requires that each state agency that has authority to accept gifts or grants have a rule establishing procedures to govern how such gifts and grants are handled by the agency. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts §31.11 on an emergency basis.

Mr. Ricardo Hernandez, Executive Director, has determined that for the first five-year period the rule is in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Hernandez has also determined that for each year of the first five year period the rule amendments are in effect the public benefit anticipated as a result of this rule will be greater public awareness of the gifts and grants the Commission receives. Additionally, Mr. Hernandez has determined that there will be no effect on small and micro businesses. There will be no anticipated economic cost to persons who are required to comply with this rule as proposed.

Comments on the proposal may be submitted to Mr. Ricardo Hernandez, Executive Director, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new rule is proposed under the Texas Government Code §444.009, which provides that the commission may adopt rules to govern itself, its officers, and its committees and may prescribe the duties of its officers, consultants, and employees.

No other codes, articles or statutes are affected by this new rule.

##### §31.11. Gifts, Grants, and Donations.

(a) The Commission may accept gifts, grants, or donations from an individual, a foundation, corporation, estate, or other legal entity.

(b) The acceptance of all gifts, grants, or donations is subject to the final approval of the Commission.

(1) A list of all gifts, grants, or donations received by the Commission since the previous Commission meeting will be placed on the Commission agenda for approval.

(2) Supporting documentation describing each gift, grant, or donation will be provided to the Commission.

(3) Gifts, grants, or donations requiring matching funds will only be accepted to support activities for which the Commission has a corresponding legislative appropriation authority.

(4) Gifts, grants, or donations are required to be publicly acknowledged and may not be made on an anonymous basis.

(5) Gifts, grants, and donations may be made to the Commission's Operating Fund (0334) or to the Texas Cultural Endowment Fund.

##### (c) Restricted Gifts.

(1) Restricted gifts are those gifts that are required by the donor to be used for a specific purpose, program, or function.

(2) The Commission recognizes the importance of accepting restricted gifts. Restricted gifts provide the opportunity for a donor and the state to realize immediate benefits from a contribution toward the fulfillment of the Commission's mission of developing a receptive climate for the arts. The Commission will consider each gift on a case by case basis.

(3) Restrictions on gifts must be consistent with the mission, purpose, legal authority, and goals of the Commission.

(4) Restricted gifts may be given for the following purposes:

(A) Further the Commission's established grant programs;

(B) Further the Young Masters program;

(C) Further arts education initiatives;

(D) Further art opportunities to a broad segment of the state's underserved population;

(E) Support a geographic area of the state; or

(F) Support a particular artistic discipline or genre.

(G) Any other purpose authorized by law.

(5) The Commission will not accept restricted gifts intended for the sole benefit of a single organization.

(6) Any organization receiving a grant/contract as a result of a restricted gift must provide evidence of sound administrative and fiscal management practices, comply with the Commission's general eligibility rules and guidelines, and meet the requirements of the restrictions placed on the gift by the donor.

(7) Any organization receiving a grant/contract as a result of a restricted donation must provide acknowledgment of receipt of the gift from the donor and the Commission as appropriate.

(d) No employee of the Commission may serve as an officer or director in any organization making donations to the Commission.

(e) Gifts, grants, or donations to the Commission may not be used for the supplementation of the salary of any employee of the Commission.

(f) The Commission will not accept donations or gifts from an organization or individuals administering grants from the Commission or which have projects undergoing review by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606076

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: December 17, 2006

For further information, please call: (512) 936-6564



## CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

The Texas Commission on the Arts proposes the repeal and replacement of §35.1 and §35.2, concerning A Guide to Operations, Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the repeal and replacement of §35.1 and §35.2 on an emergency basis. Additionally, the Texas Commission on the Arts contemporaneously withdraws the previously published emergency repeal and replacement and proposed repeal and replacement which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7208).

The withdrawal and re-proposal are necessary because the information within the adoption by reference material located within §35.1, A Guide to Operations and §35.2, A Guide to Programs and Services has been updated. However, the text of the actual rules has not changed.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended November 2006.

Mary Beck, Director of Finance and Administration, Texas Commission on the Arts, has determined that, for the first five-year period the repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal and new sections as proposed.

Ms. Beck also has determined that, for each year of the first five years the repeal and new sections are in effect, the public benefit anticipated as a result of enforcing the repeal and new sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There is no anticipated economic cost to persons

who are required to comply with the repeal and new sections as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Jim Bob McMillan, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

### 13 TAC §35.1, §35.2

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

*§35.1. A Guide to Operations.*

*§35.2. A Guide to Programs and Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606073

Ricardo Hernandez

Executive Director

Texas Commission on the Arts

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For further information, please call: (512) 936-6564



### 13 TAC §35.1, §35.2

The new sections are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

*§35.1. A Guide to Operations.*

The commission adopts by reference A Guide to Operations (revised November 2006). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at [www.arts.state.tx.us](http://www.arts.state.tx.us).

*§35.2. A Guide to Programs and Services.*

The commission adopts by reference A Guide to Programs and Services (revised November 2006). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at [www.arts.state.tx.us](http://www.arts.state.tx.us).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ricardo Hernandez

Executive Director

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## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 97. COMMUNICABLE DISEASES**

##### **SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§97.1 - 97.11; the repeal of §97.12 and §97.13; and new §97.12 and §97.13 concerning control of communicable diseases.

##### **BACKGROUND AND PURPOSE**

The amendments, repeal and new sections are necessary to comply with Health and Safety Code, Chapter 81. The amendments, repeal and new sections will enable the reporting sources to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting. The amendments adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments also add language on the investigation and control of communicable diseases that are authorized by Health and Safety Code, Chapter 81.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.1 - 97.13 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

##### **SECTION-BY-SECTION SUMMARY**

Amendments to §97.1 update legacy agency references, update definitions by adding, deleting, and revising text as necessary for clarity. Amendments to §97.2 add a reference to the Health Insurance Portability and Accountability Act (HIPAA). Amendments to §97.3 update legacy agency references, add a website for accessing a summary list of notifiable conditions, update legacy agency references, change the scope of hepatitis B and C notifications, add influenza-associated pediatric mortality, leishmaniasis, *Taenia solium*, Vancomycin-intermediate resistant *Staphylococcus aureus* (VISA), Vancomycin resistant *Staphylococcus aureus* (VRSA), and West Nile fever to the notifiable conditions list, update diseases requiring submission of specimens to Department of State Health Services laboratory. Amendments to §97.4 update legacy agency references, and changes reporting time frames for perinatal hepatitis B, pertus-

sis, tularemia and severe acute respiratory syndrome (SARS). Amendments to §97.5 update legacy agency references, where to report a disease or isolate, and where to submit an isolate. Amendments to §97.6 update legacy agency references, provide a toll-free telephone number for reporting diseases to the department by local health authorities and regional directors. Amendments to §97.7 updates guidance for exclusion from child-care facilities and schools. Amendments to §97.8 update legacy agency references. Amendments to §97.9 add language regarding application of control measures to private and common carriers as required by Health and Safety Code, §81.086(b). Amendments to §97.10 update legacy agency references and clarify existing language. Amendments to §97.11 add persons, as required by legislation, who need to or may be notified by hospitals if they may have been exposed to a communicable disease.

New §97.12 is the renumbered §97.13, and new §97.13 is the renumbered §97.12 moved for better flow of the rules and reorganized for clarity. In the new §97.12, the definition of correctional officer is changed to include volunteers and others involved in a facility's operations. New §97.13 adds avian influenza, hantavirus, SARS and smallpox to diseases that require tagging of body upon death. All of Subchapter A includes updates to names, references, and processes to reflect post-consolidation operations.

##### **FISCAL NOTE**

Martha McGlothlin, Acting Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

##### **SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

##### **PUBLIC BENEFIT**

In addition, Ms. McGlothlin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The institutions and individuals responsible for reporting communicable diseases will have clear guidance on what is reportable; the public health community will have clear guidance on its legal responsibilities regarding control and exposure to communicable disease; and the general public will be better served by the department as it fulfills its responsibility to monitor communicable disease, assess and respond to the threat it presents to the public's health.

##### **REGULATORY ANALYSIS**

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Jeff Taylor, Manager, Infectious Disease Epidemiology and Surveillance Group, Infectious Disease Control Unit, Community Preparedness Section, Division for Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7676 or by email to Jeff.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### 25 TAC §§97.1 - 97.13

#### STATUTORY AUTHORITY

The proposed amendments and new sections are authorized by Health and Safety Code, §81.004, which gives the commissioner of the department (commissioner) general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; §81.041, which requires that the executive commissioner of the Health and Human Services Commission (executive commissioner) identify and maintain a list of reportable diseases; §81.042(c), which requires rules to establish procedures to determine if a child should be reported and excluded from school; §81.042(d), which requires that health facilities report disease diagnoses in accordance with procedures adopted by the executive commissioner; §81.50, which requires that the executive commissioner adopt rules that prescribe the criteria that constitute exposure to reportable diseases; §81.082, which requires that control measures for communicable disease must be established by rules adopted by the executive commissioner; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001.

The proposed amendments and new sections affect Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

##### §97.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Common carrier--Any vehicle or device available to the public for transportation of persons, goods, or messages.

(7) [(6)] Communicable disease--An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(8) [(7)] Contact--A person or animal that has been in such association with an infected person or animal or a contaminated environment so as to have had opportunity to acquire the infection.

(9) [(8)] Department--Department of State Health Services [Texas Department of Health].

(10) [(9)] Disinfection--Application of chemical or physical agents to destroy [~~Destruction of~~] infectious agents outside the body [directly applied by chemical or physical means].

[(10)] Enterococcus Species--Any *Enterococcus* bacteria isolated in a laboratory.]

(11) - (12) (No change.)

(13) Health authority--A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:

(A) a local health authority appointed by the local government jurisdiction; or[:]

[(i)] director of a local health department; or]

[(ii)] physician as appointed by the Commissioner of Health if there is no director of a local health department.]

(B) a regional director of the Department of State Health Services [Texas Department of Health] if no physician has been appointed by the [Commissioner of Health as a] local government [health authority].

(14) - (16) (No change.)

(17) Perinatal hepatitis B infection--HBsAg positivity in any infant aged >1-24 months.

[(17)] Penicillin resistant *Streptococcus pneumoniae*--*Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 µg/mL or greater (high level), and/or an intermediate level resistance of 0.1 -1 µg/mL.]

(18) Physician--A person licensed by the Texas [State Board of] Medical Board [Examiners] to practice medicine in Texas.

(19) Physician assistant--A person licensed as a physician assistant by the Texas [State Board of] Physician Assistant Board [Examiners].

(20) - (25) (No change.)

(26) Specimen Submission Form [G-1]--A current Department of State Health Services [multipurpose] laboratory specimen submission form available from the Department of State Health Services, Laboratory Services Section [Texas Department of Health, Bureau of Laboratories], 1100 West 49th Street, Austin, Texas, 78756-3199.

(27) Vancomycin-intermediate resistant *Staphylococcus aureus* (VISA)--*Staphylococcus aureus* with a vancomycin minimum inhibitory concentration (MIC) of 4 µg/mL through 8 µg/mL.

[(27)] Vancomycin resistant *Enterococcus* species--*Enterococcus* species with a vancomycin MIC greater than 16 micrograms

per milliliter (µg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g., *Enterococcus casseliflavus* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 µg/mL - 16 µg/mL do not need to be reported.]

(28) Vancomycin-resistant *Staphylococcus aureus* (VRSA) [and vancomycin resistant coagulase negative *Staphylococcus* species]-*Staphylococcus aureus* [or a coagulase negative *Staphylococcus* species] with a vancomycin MIC of 16 [8] µg/mL or greater.

(29) (No change.)

§97.2. *Who Shall Report.*

(a) - (g) (No change.)

(h) The Health Insurance Portability and Accountability Act (HIPAA) allows reporting without authorization for public health purposes and where required by law. Title 45 Code of Federal Regulations §164.512(a) and (b).

§97.3. *What Condition to Report and What Isolates to Report or Submit.*

(a) Humans.

(1) Identification of notifiable conditions

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at <http://www.dshs.state.tx.us/idcu/>. [The most current edition of the Texas Department of Health's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.] Copies are filed in the Infectious Disease Surveillance and Epidemiology Branch [and Surveillance Division], Department of State Health Services [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756 [and are available for public inspection during regular working hours].

(B) (No change.)

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, C, D, E, and unspecified (acute); [hepatitis E (newly diagnosed infection, effective 1/1/00);] hepatitis B, (acute and chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery; perinatal hepatitis B infection; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; severe acute respiratory syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention; shigellosis; smallpox; spotted fever group

rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae*; syphilis; *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; yersiniosis; and vancomycin-intermediate resistant *Staphylococcus aureus* (VISA), vancomycin-resistant *Staphylococcus aureus* (VRSA), and West Nile fever [Severe Acute Respiratory Syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention].

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that [which] may be of public health concern should be reported by the most expeditious means.

[(C) The following organisms shall be reported: *Enterococcus* species; vancomycin resistant *Enterococcus* species; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae*.]

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) - (C) (No change.)

(D) for other persons identified with latent TB infection - complete name; date of birth; physical address and county of residence; and diagnostic information [all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services)];

(E) (No change.)

(F) for hepatitis A, B, C, D, E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician name, address, and telephone number;

(G) for perinatal hepatitis B - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) [(F)] for chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

[(G) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, type of diagnosis, date of onset, and physician name, address, and telephone number;]

[(H) for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly;]

(I) for VISA [vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*]; and VRSA - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, anatomic site of culture, and clinical indicators), date of onset, and physician name, address, and telephone number [vancomycin resistant coagulase negative *Staphylococcus* species; - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture]; [and]

(J) for Hansen's disease - name; date of birth; sex; race and ethnicity; social security number; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician; and[-]

(K) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators), date of onset, and physician name, address, and telephone number.

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* O157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis* [meningitides] from normally sterile sites), plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), all [vancomycin resistant] *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL, and *Vibrio* species [vancomycin resistant coagulase negative *Staphylococcus* species] - pure cultures shall be submitted accompanied by a current department Specimen Submission Form [G-1].

(5) Laboratory reports. Reports from laboratories shall include name, patient identification number, address, telephone number, age, date of birth, sex, race and ethnicity, specimen submitter name, address, and phone number, specimen type, date specimen collected, disease test and test result, normal test range [values], date of test report, and physician name and telephone number.

(b) (No change.)

§97.4. *When to Report a Condition or Isolate[- Where to Submit an Isolate; Where to Report a Condition or Isolate].*

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the regional director of the Department of State Health Services [Texas Department of Health] (department): anthrax; botulism, foodborne; diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (rubeola); meningococcal infection, invasive; [pertussis;] poliomyelitis, acute paralytic; plague; rabies; severe acute respiratory syndrome (SARS); smallpox; tularemia; viral hemorrhagic fevers; yellow fever. Vancomycin-intermediate resistant *Staphylococcus aureus* (VISA) and vancomycin-resistant *Staphylococcus aureus* (VRSA) [Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species] shall be reported immediately by phone to the Infectious Disease Surveillance and Epidemiology Branch [and Surveillance Division], Department of State Health Services [Texas Department of Health], Austin at (800) 252-8239.

(2) The following notifiable conditions shall be reported within one working day of identification as a suspected case: brucellosis, hepatitis A (acute), perinatal hepatitis B, pertussis, Q fever, rubella (including congenital), [tularemia;] tuberculosis, and *Vibrio* infection (including cholera).

(3) - (5) (No change.)

[(6) For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant

*Streptococcus pneumoniae* - reports shall be made no later than the last working day of March, June, September, and December.]

(6) [(7)] All anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* O157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis* [meningitides] from normally sterile sites), plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), VISA, VRSA and *Vibrio* species [all vancomycin resistant *Staphylococcus aureus*; and all vancomycin resistant coagulase negative *Staphylococcus* species] shall be submitted as pure cultures to the Department of State Health Services, Laboratory Services Section [Texas Department of Health, Bureau of Laboratories], 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

(b) Animals.

[(4)] Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

[(2) Reportable conditions in animals shall be reported to either the appropriate Texas Department of Health regional zoonosis control office or the Zoonosis Control Division office in Austin.]

[(3) Conditions in animals that are reportable to both the Texas Department of Health and the Texas Animal Health Commission can be reported to either one of the agencies which will forward the information to the other agency.]

§97.5. *Where To Report a Condition or Isolate; Where To Submit an Isolate.*

(a) Humans.

(1) [(a)] A physician, dentist, veterinarian, chiropractor, reporting officer of a hospital, [and a] person in charge of a hospital laboratory (if the laboratory reports independently), [or] person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant, or school authority shall report to the local health authority where the office, clinic, hospital, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, hospital, or school is located, the report shall be made to the Department of State Health Services [Texas Department of Health] (department) regional director. Public health emergencies shall be reported to the department's central office if the local health authority or the department's regional director is not immediately accessible.

(2) [(b)] The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report a condition or submit an isolate as follows.

(A) [(1)] If the laboratory examination was requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the physician's office is located, to the department's regional director for the jurisdiction where the physician's office is located if no local health authority exists, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

(B) [(2)] If the laboratory examination was not requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the laboratory is located, to the department's regional director for the jurisdiction where the laboratory is located if no local health authority has been appointed, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

(C) [(3)] For VISA and VRSA [vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species] immediately report by phone to the Infectious



Disease Surveillance and Epidemiology Branch [and Surveillance Division] at 1-800-252-8239. [For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin resistant *Streptococcus pneumoniae*; reports shall be mailed to the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199; or faxed to the Infectious Disease Epidemiology and Surveillance Division at (512) 458-7616.]

(D) [(4)] All anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E. coli* 0157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis*) [*Neisseria meningitidis*] from normally sterile sites, plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), all *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL, and *Vibrio* species [all vancomycin resistant *Staphylococcus aureus*; and all vancomycin resistant coagulase negative *Staphylococcus* species] shall be submitted as pure cultures to the Department of State Health Services, Laboratory Services Section [Texas Department of Health, Bureau of Laboratories], 1100 West 49th Street, Austin, Texas 78756-3199.

(3) [(e)] Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(b) Animals.

(1) Reportable conditions in animals shall be reported to either the appropriate Department of State Health Services regional zoonosis control office or the Zoonosis Control Branch office in Austin.

(2) Conditions in animals that are reportable to both the Department of State Health Services and the Texas Animal Health Commission can be reported to either one of the agencies, which will forward the information to the other agency.

§97.6. *Reporting and Other Duties of Local Health Authorities and Regional Directors.*

(a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Department of State Health Services [Texas Department of Health's] (department) central office.

(b) Those notifiable conditions identified as public health emergencies in §97.4 (a) of this title (relating to When to Report a Condition or Isolate; When to Submit an Isolate; Where to Report a Condition or Isolate)) shall be reported immediately to the department by telephone at (800) 252-8239.

(c) (No change.)

(d) For notifiable conditions not listed in subsections (b) and [subsection] (c) of this section, the local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department: name, address, telephone number, [city,] age, date of birth, sex, race and ethnicity, [physician,] disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators) [type of diagnosis], date of onset, and physician name, address, and telephone number.

(e) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) (No change.)

(2) [If by electronic transmission, including facsimile transmission by telephone, the local health authority or the department's regional director must obtain prior approval of the manner and form of the transmission from the commissioner of health (commissioner) or his/her designee.] Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(f) - (h) (No change.)

(i) Persons reporting notifiable conditions in animals shall be referred to the central office or the appropriate regional office of the department's Zoonosis Control Branch [Division].

§97.7. *Diseases Requiring Exclusion from Child-care Facilities and Schools.*

[(a)] The Texas Department of Health (department) publication titled "Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting" may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available from the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 upon request.]

(a) [(b)] The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

- (1) amebiasis--exclude until treatment is initiated;
- (2) campylobacteriosis--exclude until after diarrhea and fever subside;
- (3) chickenpox--exclude until the lesions become dry [after seven days from onset of rash, except immunocompromised individuals who should not return until all blisters have crusted over (may be longer than seven days)];
- (4) common cold--exclude until fever subsides;
- (5) conjunctivitis, bacterial and/or viral--exclude until written permission and/or permit is issued by a physician or local health authority;
- (6) fever--exclude until fever subsides without use of fever suppressing medications;
- (7) fifth disease (erythema infectiosum)--exclude until fever subsides;
- (8) gastroenteritis[, viral]--exclude until diarrhea subsides;
- (9) giardiasis--exclude until diarrhea subsides;
- (10) head lice (pediculosis)--exclude until one medicated shampoo or lotion treatment has been given;
- (11) hepatitis [, viral, Type] A--exclude until one week after onset of illness;
- (12) impetigo--exclude until treatment has begun;
- (13) infectious mononucleosis--exclude until physician decides or fever subsides;
- (14) influenza--exclude until fever subsides;
- (15) measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;

(16) meningitis, bacterial--exclude until written permission and/or permit is issued by a physician or local health authority;

(17) meningitis, viral--exclude until fever subsides;

(18) mumps--exclude until nine days after the onset of swelling;

(19) pertussis (whooping cough)--exclude until completion of five days of antibiotic therapy;

(20) ringworm [~~of the scalp~~]-exclude until treatment has begun;

(21) rubella (German measles)--exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;

(22) salmonellosis--exclude until diarrhea and fever subside;

(23) scabies--exclude until treatment has begun;

(24) shigellosis--exclude until diarrhea and fever subside;

(25) streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and

(26) tuberculosis, pulmonary--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.

(b) [(e)] The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of Health [~~commissioner of health~~] (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) [(d)] of this section is fulfilled.

(c) [(d)] Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by [submitting]:

(1) submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) submitting a permit for readmission issued by a local health authority; or

(3) meeting readmission criteria as established by the commissioner.

#### *§97.8. General Control Measures for Notifiable Conditions.*

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the Commissioner of Health [~~commissioner of health~~] (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts. On request, a person shall provide the Department of State Health Services [Texas Department of Health] (department) or health authority with records, data, and other information according to the written instruction of the department or health authority. The health authority and the department shall keep this information confidential.

(2) - (5) (No change.)

#### *§97.9. Quarantine of Specific Premises and Application of Control Measures to Private and Common Carriers.*

(a) A health authority may declare a house, building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

(b) The department or health authority may investigate and apply control measures to private and common carriers and private conveyances as authorized in Disease Prevention and Control Act (Act), Health and Safety Code, §81.086, when they have reasonable cause to believe that:

(1) it has departed from or traveled through an area infected or contaminated with a communicable disease;

(2) it is or may be infected or contaminated with a communicable disease;

(3) a individual on board has been exposed to or is the carrier of a communicable disease; or

(4) it has cargo or an object on board that is or may be infected or contaminated with a communicable disease.

#### *§97.10. Confidential Nature of Case Reporting and Records.*

(a) All individual morbidity case reports received by the health authority or the Department of State Health Services [Texas Department of Health] (department) are confidential records and not public records.

(b) (No change.)

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as the information does not permit the identification of an individual [~~an individual is not identifiable~~].

#### *§97.11. Notification of Emergency Medical Personnel [Service Employee], Fire Fighters, [Fighter, or] Peace Officers, Detention Officers, County Jailers, or Other Persons Providing Emergency Care [Officer] of Possible Exposure to a Disease.*

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority in certain instances when an emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. A hospital that gives notice of a possible exposure under this section or a local health authority that receives notice of a possible exposure under this section may give notice of the possible exposure to a person other than emergency medical service employee, a peace officer, a detention officer, a county jailer, or a fire fighter if the person demonstrates that the person was exposed to the reportable disease while providing emergency care.

(b) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); pertussis; pneumonic plague; SARS; smallpox; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) Haemophilus influenzae type b infection, invasive; meningitis [(specify type)]; meningococcal infections, invasive;

mumps; poliomyelitis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) - (4) (No change.)

(c) Notification processes. The following notification processes shall apply when possible exposures to notifiable conditions occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions listed in subsection (b)(1) of this section, then notice of a possible exposure of an emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter to the disease shall be given to the health authority for the jurisdiction where the hospital is located.

(2) For possible exposures to any of the diseases listed in subsection (b)(2) - (4) of this section, the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter shall provide a medical professional at the hospital with notice, preferably written, of the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) (No change.)

(B) The health authority shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter.

(C) The director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter shall inform the employee of the health authority's assessment.

(D) (No change.)

(d) (No change.)

§97.12. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who receives a bona fide exposure that places him or her at risk of a notifiable condition in the course of employment or volunteer service may request the Department of State Health Services (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Correctional officer--A worker whose normal duties and responsibilities include management or supervision of incarcerated or detained persons or an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by §1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by §51.02, Family Code.

(2) Emergency responder--An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(3) Requestor--An emergency responder who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a notifiable condition in the course of his/her duties.

(4) Source--The person who may have exposed an emergency responder to a notifiable condition during the emergency responder's course of duties.

(c) Diseases and criteria that constitute exposure. The notifiable conditions and the criteria that constitute exposure to such diseases are as outlined in §97.11(b)(1) - (4) of this title (relating to Notification of Emergency Medical Personnel, Fire Fighters, Peace Officers, Detention Officers, County Jailers, or other Persons Providing Emergency Care of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050(d), (e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a notifiable condition has occurred:

(1) the health authority for the jurisdiction in which the emergency responder is employed;

(A) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of notifiable conditions in the jurisdiction served by the health department; or

(B) if the health authority does not choose to make a determination of the risk of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of notifiable condition, or for counties which do not have an appointed health authority, the regional director of the department of which the county or municipality is a part; and

(2) for the Texas Department of Criminal Justice (TDCJ), the TDCJ Deputy Director of Health Services (Institutional Division) shall serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency responder:

(1) has experienced the exposure in the course of his or her employment or volunteer service;

(2) believes that the exposure places him or her at risk of a notifiable condition; and

(3) presents to the department's designee a sworn affidavit that delineates the reasons for the request.

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency responder's request and inform him or her whether the request meets the criteria establishing risk of infection with a notifiable condition;

(2) determine which diagnostic tests may be indicated to verify exposure to certain notifiable conditions;

(3) give the source who is subject to the order prompt and confidential written notice of the order which must include the following items:

(A) the grounds and provision of the order, and the factual basis for its issuance;

(B) a referral to appropriate health care facilities where the source can be tested for certain notifiable conditions;

(C) a notice to the source who is subject to the order of the right to refuse to be tested; and

(D) a statement of the authority of the department's designee to ask for a court order requiring the test; and

(4) request the prosecuting attorney who represents the state in district court to petition said court for a hearing on the order, in the event that the source who is subject to the order refuses to comply.

(g) Source's right to an attorney. If the source who is subject to the order refuses to comply, and a hearing in district court ensues, then:

(1) the source has a right for an attorney to be present at the hearing;

(2) the court shall appoint an attorney for a source who cannot afford legal representation; and

(3) the source may not waive the right to an attorney unless he/she has consulted with an attorney.

(h) Court proceedings. The district court proceedings include:

(1) a determination as to whether exposure occurred and whether the exposure presents a possible risk of infection as outlined in §97.11(b)(1) - (4) of this title;

(2) consideration of evidence if introduced by either the attorney for the state and/or the attorney for the source;

(3) at the conclusion of the hearing, taking appropriate action being either:

(A) an order requiring counseling and testing of the person for certain notifiable conditions; or

(B) a refusal to issue an order if the court has determined that the counseling and testing of the source is unnecessary; and

(4) the option to assess court costs against the requestor if the court finds that there was not reasonable cause for the request.

(i) Additional actions required of the department's designee. The department's designee shall be responsible for the following actions with respect to testing:

(1) develop protocols for coding test specimens to ensure that any identifying information concerning the source will be destroyed as soon as the testing is complete;

(2) inform the requestor of the test results;

(3) inform both the requestor and the source of the need for medical follow-up and counseling services in the event that the source is found to have a notifiable condition; and

(4) advise appropriate postexposure medical follow-up as recommended by the United States Public Health Service.

(j) HIV counseling and testing. HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing required under the Health and Safety Code, §85.081.

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

(1) An emergency responder who claims a possible work-related exposure to a notifiable condition must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the notifiable condition.

(2) An emergency responder exposed to a notifiable condition during the course of employment shall be entitled to the benefits described in the Government Code, Chapter 607.

(3) A state emergency responder claiming an exposure to HIV infection in the normal course of his/her duties must follow the postexposure procedure mandated by the Health and Safety Code, §85.116, and §97.140 of this title (relating to Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job).

(4) For posting and notice requirements, refer to the rules of the Texas Department of Insurance, Division of Workers' Compensation in Title 28, Texas Administrative Code, Chapter 110 (Required Notices of Coverage).

(5) For further clarification of workers' compensation issues, emergency responders and their employers should contact the Texas Department of Insurance, Division of Workers' Compensation at 1-800-252-7031.

(l) Testing of the exposed person. An emergency responder who may have been exposed to a notifiable condition, may not be required to be tested.

§97.13. Death of a Person with Certain Communicable Diseases.

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the hospital administrator, clinic administrator, nurse, or the physician shall affix or cause to be affixed a tag on the body, preferably the great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "COMMUNICABLE DISEASE--BLOOD/BODY SUBSTANCE PRECAUTIONS REQUIRED" in letters no smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; avian flu, brucellosis; cholera; Creutzfeldt-Jakob disease; Hantavirus pulmonary syndrome; hepatitis, viral; human immunodeficiency virus (HIV) infection; plague; Q fever; rabies; relapsing fever; Rocky Mountain spotted fever; severe acute respiratory syndrome (SARS); smallpox; syphilis; tuberculosis; tularemia; and viral hemorrhagic fevers.

(d) All persons should routinely practice standard infection control procedures when performing postmortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2006.

TRD-200606032

Cathy Campbell  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: December 17, 2006  
For further information, please call: (512) 458-7111 x6972



## 25 TAC §97.12, §97.13

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §81.004, which gives the commissioner of the department (commissioner) general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; §81.041, which requires that the executive commissioner of the Health and Human Services Commission (executive commissioner) identify and maintain a list of reportable diseases; §81.042(c), which requires rules to establish procedures to determine if a child should be reported and excluded from school; §81.042(d), which requires that health facilities report disease diagnoses in accordance with procedures adopted by the executive commissioner; §81.50, which requires that the executive commissioner adopt rules that prescribe the criteria that constitute exposure to reportable diseases; §81.082, which requires that control measures for communicable disease must be established by rules adopted by the executive commissioner; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001.

The proposed rules affect Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

§97.12. *Death of a Person with Certain Communicable Diseases.*

§97.13. *Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders.* This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2006.

TRD-200606033  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: December 17, 2006  
For further information, please call: (512) 458-7111 x6972



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §§800.3, 800.5 - 800.7

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A, General Provisions, §§800.3, 800.5, 800.6, and 800.7

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

#### PART III. IMPACT STATEMENTS

#### PART IV. COORDINATION ACTIVITIES

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rule amendment is to implement Senate Bill (SB) 452, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code, Chapter 552 by transferring all duties relating to the Public Information Act to the Office of the Attorney General (OAG).

Senate Bill 452 streamlines the process of providing public information by housing all functions relating to the Public Information Act under one agency. The OAG now responds to all questions about compliance with the Public Information Act. As a result, operations are more efficient and the public is better served.

The purpose of the proposed rule amendment is also to conform the language of §800.6(f) regarding de minimis requests to reflect that charges are assessed when permissible under the Public Information Act. Specifically, charges will be assessed for materials, labor, and overhead when the request is fewer than 50 pages and the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

#### SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

#### §800.3. Historically Underutilized Businesses

Section 800.3(a) is modified to replace the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

#### §800.6. Charges for Copies of Public Records

Section 800.6(a) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC Chapter 70).

Section 800.6(c) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC Chapter 70).

Section 800.6(f) is modified to align the rule regarding de minimis requests with Texas Government Code, §552.261 et seq. to allow recoupment of the cost of handling open records requests that are under 50 pages. Specifically, the Public Information Act allows recoupment of charges for materials, labor, and overhead in situations where the requested records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

Currently, Chapter 800 waives charges for open records that are 50 pages or less. However, some open records requests result in the production of fewer than 50 pages yet require extensive staff time and resources to fulfill. While the Commission intends to recoup charges where the materials, labor, and overhead charges are applicable under the Public Information Act for requests under 50 pages, the Commission may waive or reduce charges in circumstances in which §552.267 of the Public Information Act apply. Section 552.267 provides that a governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. In addition, §552.267 provides that, if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. The Commission intends to apply these provisions when such circumstances arise.

#### §800.7. Agency Vehicles

Section 800.7(a) is modified to replace the reference to the General Services Commission and Internet address with the Texas Building and Procurement Commission because of the agency's name change.

Section 800.7(b)(3) is modified to replace the reference to the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

#### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that, for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There may be economic costs to persons required to comply with changes to Chapter 800, and there may be an adverse economic effect on small businesses or microbusinesses. Persons who request public information from the Agency, where the material, labor, and overhead charges are applicable under the Public Information Act for requests under 50 pages will be required to pay reasonable costs related to reproducing the public information, including costs of materials, labor, and overhead. This

provision may have an economic cost to those persons, including small businesses or microbusinesses, estimated at between \$4.50 and \$36 per request. Section 800.6(f) regarding de minimis requests is amended in the proposed rule to provide that no charge will be assessed to any individual or entity for providing copies of records in response to a request for public information under Texas Government Code, Chapter 522 when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consists of fewer than 50 pages of readily available, standard-sized pages maintained as paper documents, except that charges for materials, labor, and overhead may be assessed if the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility. The preamble to the rule explains that, while the Commission intends to recoup charges where the material, labor, and overhead charges are applicable under the Public Information Act for requests fewer than 50 pages, the Commission may waive or reduce charges in circumstances in which §552.267 of the Public Information Act apply. Section 552.267 provides that a governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that the waiver or reduction of the charge is in the public interest because the information primarily benefits the general public. This section also provides that, if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. The charges for small or microbusinesses would be the same as the charges for large businesses; however, the Commission may apply the waiver or reduction of charges provisions contained in §552.267 where applicable to respond to small or microbusinesses that fall into the categories described in statute.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that, for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure costs are recouped to the extent feasible under the Public Information Act and update citations in the chapter.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Government Code, Chapters 552, 2161, and 2171. Chapter 800.

*§800.3. Historically Underutilized Businesses.*

(a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001, Definitions, in their efforts to participate in contracts to be awarded by the Commission. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in the Texas Administrative Code at 1 TAC Chapter 111 (relating to Executive Administration Division) incorporated herein by reference. Chapter 111 was promulgated by the Texas Building and Procurement Commission [General Services Commission] and sets out the State's Historically Underutilized Business Certification Program.

(b) (No change.)

*§800.5. Commission Professional Development Program.*

(a) (No change.)

(b) Eligibility. The executive director or the executive director's designee will determine an employee's eligibility for the professional development program. Factors to be considered include, but are not limited to:

- (1) an[~~An~~] employee's job performance;
- (2) a[~~A~~] recommendation from the employee's supervisor;
- (3) the[~~The~~] relationship of the training to the employee's position; and
- (4) any[~~Any~~] other factor deemed relevant by the executive director or his designee.

(c) Restitution from Employees for Training Costs. The employee training is conditional upon all of the following:

- (1) (No change.)
- (2) At the discretion of the executive director or the executive director's designee, the employee shall complete and file with the Commission prior to the commencement of the training, on forms prescribed by the Commission, an employee training agreement that sets forth the terms and conditions of the training assistance, including a provision for working for the Agency[~~agency~~] for a prescribed period of time or paying back the amount of the assistance.

(3) For any training paid for by the Commission, where the employee does not perform the employee's regular duties for three or more months due to the training, the employee shall:

- (A) (No change.)
- (B) pay the Commission for all costs associated with the training that were paid before, during, or after the training, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensation leave.

*§800.6. Charges for Copies of Public Records.*

(a) General Procedure. Except as otherwise specified in this chapter, the [Texas Workforce Commission (Commission)] hereby adopts by reference the definitions, methods, procedures, and charges for copies of public records required under [set out in] the Office of the Attorney General rules (1 TAC Chapter 70)[General Services Commission Rules at 1 TAC §§111.61 - 111.71], as may be amended.

(b) Methods of Making Requests. Requests may be submitted in writing to the following mailing address: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin,

Texas 78778-0001. Requests also may be submitted [made] by e-mail or facsimile to designated e-mail and facsimile locations. [electronic mail (e-mail) shall be submitted to open.records@twc.state.tx.us to be considered a valid request.]

(c) Standard Fees. The Commission may establish a standard fee for the handling of certain types of repetitive requests when the costs of responding to such requests are substantially similar in most cases. The standard fee will be the average costs of handling that type of request. The average cost is calculated using the personnel, resource, and overhead charges set forth in the Office of the Attorney General rules (1 TAC Chapter 70) governing charges for copies of public records [General Services Commission rules] and will be based upon a survey of a representative sample of requests.

(d) - (e) (No change.)

(f) De Minimis Requests. No charge will be assessed to any individual or entity for providing copies of records in response to a request for public information [Public Information] under Texas Government Code, Chapter 552, when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consist of fewer than 50 pages of readily available, standard-size pages maintained as paper documents, except that charges for materials, labor, and overhead may be assessed if the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

(g) - (h) (No change.)

*§800.7. Agency Vehicles.*

(a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code [Section] §2171.1045. The intent of the Commission is to ensure that the use and management of vehicles by the Agency is consistent with the State Vehicle Fleet Management Plan (Plan) as adopted by the Office of Vehicle Fleet Management of the Texas Building and Procurement Commission [General Services Commission]. The Plan may be viewed on the Internet [internet] at http://www.tbpc.state.tx.us/fleet[: http://www.gsc.state.tx.us/fleet], or a copy may be requested from the Agency [Texas Workforce Commission].

(b) The Commission adopts by reference and shall implement the provisions contained in the [State Vehicle Fleet Management] Plan as referenced in subsection (a) of this section including the following general provisions on use of vehicles by the Agency.

(1) - (2) (No change.)

(3) The Agency will work with the Texas Building and Procurement Commission [GSC] to identify, apply for, and if possible, utilize any waiver or exemption provisions where the recognition of conditions specific to the Agency would further the general purpose of fiscal efficiency and good business practices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2006.

TRD-200606042

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 17, 2006

For further information, please call: (512) 475-0829

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CHAPTER 819. TEXAS WORKFORCE  
COMMISSION CIVIL RIGHTS DIVISION  
SUBCHAPTER F. EQUAL EMPLOYMENT  
OPPORTUNITY RECORDS AND  
RECORDKEEPING

**40 TAC §819.92**

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division:

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the rule amendment is to clarify in rule the Commission's determination of what materials are available to the parties in a civil rights matter and what materials are beyond what would constitute reasonable access to the file. The Commission's authority for determining the scope of reasonable disclosure of documents is set forth in §21.305, Texas Labor Code, regarding Access to Commission records.

Specifically §21.305 provides that "the commission shall adopt rules allowing a party to a complaint filed under §21.201 reasonable access to commission records relating to the complaint." Furthermore it provides that, "unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records: (1) after the final action of the commission; or (2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law." The rule defines reasonable access to include access to all records in the file, except those excepted from required disclosure under the Public Information Act and investigator notes. The purpose of the change in the rule is to make clear the intent of the Commission, under the authority of §21.305, Texas Labor Code, to exclude investigator notes from the materials in a civil rights matter that may be accessed. By so doing, the Commission is striving to ensure that investigators have the broadest latitude to thoroughly investigate and record their findings, while continuing to ensure that the parties have access to all other parts of the file. This proposal additionally aligns Commission practices with the Equal Employment Opportunity Commission's (EEOC) policies regarding release of records in employment discrimination complaints as reflected in the Memorandum of Understanding with EEOC.

Pursuant to §21.305, the Commission has determined what constitutes reasonable access to files. Claimants or respondents to a Civil Rights Division (CRD) investigation often request copies of the complete complaint file, including the investigator's personal notes. Generally, while an individual is authorized to have access to copies of the contents in his or her CRD complaint file, the reasonable access does not include documents in the file

that may be deemed confidential under the Public Information Act or an investigator's personal notes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes have been made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY  
RECORDS AND RECORDKEEPING

The Commission proposes the following amendments to Subchapter F:

§819.92. Access to CRD Records

Section 819.92(b) is added to provide that, pursuant to the authority granted the Commission in Texas Labor Code, §21.305, reasonable access does not include: (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or (2) investigator notes.

The new subsection provides that parties involved in an allegation filed with CRD may obtain copies of all items in the file relating to their claim but that reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or investigator notes, which will allow for more complete investigations and is consistent with the Commission's Memorandum of Understanding with EEOC.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that, for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Robert Gomez, Director, Civil Rights Division, has determined that, for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure compliance with the Memorandum of Understanding with the Equal Employment Opportunity Commission



and ensure consistent treatment of these cases with the EEOC. Furthermore, the benefits would be the consistent treatment of records within a TWC - Civil Rights Division investigation and an EEOC investigation. Specifically, the change would provide consistency with the EEOC policy for withholding investigator notes and would ensure the investigators' freedom to fully and thoroughly investigate and record all complaints, while continuing to ensure that parties get access to all other parts of the file.

#### PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities. The rules are also proposed under Texas Labor Code, §21.305, which provides the Commission with the authority to adopt rules allowing a party to a complaint filed under §21.201 reasonable access to Commission records relating to the complaint.

The rules affect Texas Government Code, Chapter 552.

§819.92. *Access to CRD Records.*

(a) Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records,

unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

- (1) following the final action of CRD; or
- (2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

(b) Pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access shall not include access to the following:

- (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or
- (2) investigator notes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 1, 2006.

TRD-200606043

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: December 17, 2006

For further information, please call: (512) 475-0829

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

##### 13 TAC §35.1, §35.2

The Texas Commission on the Arts withdraws the emergency repeal of §35.1 and §35.2 which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7205).

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606079  
Ricardo Hernandez  
Executive Director  
Texas Commission on the Arts  
Effective date: November 6, 2006  
For further information, please call: (512) 936-6564



##### 13 TAC §35.1, §35.2

The Texas Commission on the Arts withdraws the emergency new §35.1 and §35.2 which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7205).

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606080  
Ricardo Hernandez  
Executive Director  
Texas Commission on the Arts  
Effective date: November 6, 2006  
For further information, please call: (512) 936-6564



##### 13 TAC §35.1, §35.2

The Texas Commission on the Arts withdraws the proposed repeal of §35.1 and §35.2 which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7208).

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606077

Ricardo Hernandez  
Executive Director  
Texas Commission on the Arts  
Effective date: November 6, 2006  
For further information, please call: (512) 936-6564



##### 13 TAC §35.1, §35.2

The Texas Commission on the Arts withdraws the proposed new §35.1 and §35.2 which appeared in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7208).

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606078  
Ricardo Hernandez  
Executive Director  
Texas Commission on the Arts  
Effective date: November 6, 2006  
For further information, please call: (512) 936-6564



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

#### SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

##### 22 TAC §1.123

The Texas Board of Architectural Examiners withdraws the proposed amendment to §1.123 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5521).

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606000  
Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: October 30, 2006  
For further information, please call: (512) 305-8544



#### SUBCHAPTER H. DISHONEST PRACTICE

## **22 TAC §1.144**

The Texas Board of Architectural Examiners withdraws the proposed amendment to §1.144 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5524).

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606001  
Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: October 30, 2006  
For further information, please call: (512) 305-8544



## **CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER H. DISHONEST PRACTICE**

### **22 TAC §3.144**

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.144 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5529).

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606003  
Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: October 30, 2006  
For further information, please call: (512) 305-8544



## **CHAPTER 5. INTERIOR DESIGNERS SUBCHAPTER H. DISHONEST PRACTICE**

### **22 TAC §5.154**

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.154 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5535).

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606004  
Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: October 30, 2006  
For further information, please call: (512) 305-8544



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

##### 10 TAC §313.13, §313.18

The Texas Residential Construction Commission adopts amendments to §313.13 and §313.18, with non-substantive changes to the proposed text as published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6301).

Section 313.13 describes the third-party inspector's obligations to coordinate the date for the inspection with both parties and the parties' obligations to work cooperatively with the inspector to arrive at a mutually agreeable time and date for the inspection and the third-party inspector's duties for the inspection report. Non-substantive changes to the proposed text improve the section's readability and the commission's intent.

Section 313.13 incorporates provisions from §313.14 of this section, which is repealed by notice published in this same issue of the *Texas Register*.

Section 313.18 amendments make clear that, with one exception, the commission will reimburse a homeowner who pays a fee to initiate an SIRP if a final unappealable report issued by the commission affirms at least one alleged construction defect; creates a mechanism by which a builder can appeal the order if the builder is able to show that it made an offer to make substantially the same repairs as recommended by the final unappealable report issued by the commission; and clarifies the commission's delegation of authority to the Executive Director to order a builder to reimburse the SIRP inspection fees if at least one alleged construction defect is affirmed. It also provides for an order for reimbursement of a second inspection fee if a party unduly interferes with an inspection under §313.13(e). If a homeowner or builder is the guilty party in causing an inspection to be suspended, the commission could order that person to pay the cost of the second inspection fee. Other changes are proposed to streamline and provide clarity in the rule and to correct errors in the earlier published proposal.

The commission received no comments on the proposed amendments to these sections.

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16,

Property Code, Property Code Chapters 426 and 428 and, specifically, Property Code §426.004(d).

Cross references to sections: Property Code Chapters 426 and 428, and §408.001 and §426.004(d).

##### *§313.13. Home Inspection and the Third-Party Inspector's Report.*

(a) As soon as practicable but no later than two (2) business days after receipt of the SIRP request, the appointed third-party inspector shall contact the homeowner to ascertain several dates and times that are mutually convenient to conduct an inspection of the affected home. The third-party inspector shall then make reasonable attempts to contact the builder on regular business days during regular business hours to determine whether the builder or a representative is available to attend the inspection on one of the identified dates. If the builder affirms to the inspector that the builder would like to be present or to send a representative, the third-party inspector shall make reasonable efforts to work cooperatively with the builder and the homeowner to identify a mutually convenient date and time to conduct the inspection. If either party to the dispute fails to work cooperatively with the third-party inspector to arrange a time and date for the inspection, the third-party inspector shall notify the commission. Using the information provided by the third-party inspector regarding potential dates and times for the inspection, if any, the commission will resolve the matter for the parties by setting the date and time for the inspection.

(b) The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) The third-party inspector shall gather all information and other data that the third-party inspector, in the inspector's sole professional judgment, deems relevant to conduct the inspection and write the inspection report and shall gather the information by any reasonable means including taking photographs and measurements and interviewing the homeowner, the builder, and any consultants present, in order to document the inspection of the alleged defects.

(d) A third-party inspector may conduct interviews at a later date or outside the presence of others not aligned with the party subject to the interview, if the third-party inspector in the inspector's sole discretion deems it preferable for the orderly conduct of the inspection.

(e) The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner. If the third-party inspector is required to suspend an inspection under this subsection, upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs paid by the commission of any second inspection fee required as provided in §313.18 of this chapter.

(f) The third-party inspector shall not engage independently or employ the services of any testing company or any consultant.

(g) Except as otherwise provided under §313.6(a)(9) of this chapter, the builder shall submit to the third-party inspector any documentation or tangible things created or generated as a result of having received a notice of alleged construction defect(s) under §313.2 of this chapter for consideration in the third-party inspector's report to the commission.

(h) Either party may submit any information that the party wants considered by the third-party inspector in preparation of the inspection report to the inspector prior to the inspection or within a reasonable time after the inspection such that the inspector has an opportunity to review the information and timely submit the inspection report to the commission. A party that provides information to a third-party inspector shall also provide a copy of the information to the other party to the dispute and to the commission.

(i) If the alleged construction defect(s) described in the request do not include a structural matter, the third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection, but not later than the 12th day after the date the third-party inspector receives the SIRP request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(j) If the alleged construction defect(s) described in the request include a structural matter:

(1) the third-party inspector shall inspect the home as soon as practicable after receipt of the request from the commission, but not later than the 12th day after the date the third-party inspector receives the request and the requestor's submitted materials from the commission; and

(2) the third-party inspector shall submit a report after the inspection with recommendations to the commission as soon as practicable, but not later than the 45th day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(k) The third-party inspector's report shall:

(1) set forth the inspector's findings as to whether each alleged defect is in or out of compliance with the applicable warranty and building and performance standards;

(2) identify the warranty and building and performance standards upon which each finding is based; and,

(3) include one or more reasonable repair or remediation options to address any alleged construction defects found.

(l) A third-party inspector's report shall not include:

(1) a determination of liability or recommendation for payment of monetary damages;

(2) a price for any recommended repairs;

(3) comments regarding matters outside the scope of the SIRP or the third-party inspector's duties;

(4) a determination of the value of any loss allegedly suffered by the homeowner; or

(5) findings or recommendations for repair for alleged construction defects that are not listed in the SIRP or items that have been excluded by the commission as ineligible for inspection unless both the homeowner and builder agree in writing that the third-party inspector can include an inspection of those items in the report or unless the third-party inspector observes a construction defect that if left uncorrected immediately threatens the health and safety of the occupants.

#### *§313.18. Order for Reimbursement of Fees and Costs.*

(a) Upon issuance of a final unappealable report in which the findings support all or a portion of the allegations of the requesting party and the requesting party is the homeowner, the Executive Director shall issue an order on behalf of the commission to reimburse the fees paid by the requestor and the costs of the inspection paid by the commission, except as otherwise provided in §313.13(e) of this chapter.

(1) A builder may appeal a notice of the order to reimburse fees and costs under this subsection.

(2) To appeal the notice of order to reimburse fees under this subsection, the builder must file written notice of its appeal with the commission. The commission will then set the appeal for a hearing with the SOAH. The hearing will be conducted pursuant to commission rules. In order to overcome the presumption that the builder must reimburse the commission for the cost of the inspection and fees paid by the requestor, the builder must demonstrate by credible documentation that, prior to the submission of the SIRP request to the commission, the builder made a written offer to the homeowner to repair, by the builder or a third-party, all of the finally affirmed construction defects in substantially the same manner as recommended in the commission's final unappealable report, and that the homeowner had notice of the offer, and that offer was not accepted by the homeowner.

(3) The notice of appeal must be received by the commission within ten calendar days of the date that the commission notifies the builder of the obligation to reimburse the fees and costs under subsection (a) of this section.

(4) Notwithstanding a builder's successful appeal of an order to reimburse the commission for inspection fees issued under this subsection, the commission will reimburse the SIRP request fee to any homeowner who initiates a request and pays the appropriate fees under §313.5 of this chapter, if the final unappealable report issued by the commission affirms at least one alleged construction defect.

(b) If a third-party inspector finds it necessary to suspend an inspection under §313.13(e) of this chapter because a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner, then upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs of any second inspection fee required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606070

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: November 26, 2006

Proposal publication date: August 11, 2006

For further information, please call: (512) 463-2886



#### **10 TAC §313.14**

The Texas Residential Construction Commission adopts the repeal of §313.14, The Third-Party Inspector's Report, because the language in that section has been subsumed into revisions

to be adopted into §313.13 of this chapter. The repeal is adopted without changes to the proposal as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8320). The adopted revisions to §313.13 are published elsewhere in this issue of the *Texas Register*.

By adopting the repeal, the commission eliminates redundancy in the Chapter 313 sections.

No comments were received on the proposed repeal.

The repeal is adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Subtitle D of Title 16 of the Property Code, which provides for the implementation of the SIRP.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606069

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: November 26, 2006

Proposal publication date: October 6, 2006

For further information, please call: (512) 463-2886



## **TITLE 13. CULTURAL RESOURCES**

### **PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **CHAPTER 9. TALKING BOOK PROGRAM**

##### **SUBCHAPTER B. ADAPTIVE TECHNOLOGY FOR TEXAS PUBLIC LIBRARIES**

###### **13 TAC §§9.15 - 9.21**

The Texas State Library and Archives Commission adopts the proposal to repeal 13 TAC §§9.15 - 9.21, concerning adaptive technology for Texas public libraries and the Print Access for Texans (PAFT) program, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7914), and the text will not be republished.

The reasons for adopting these rules no longer exist. The rules are no longer necessary as the PAFT program has ceased to exist and is no longer being administered by the commission's Talking Book Program.

No comments were received regarding the proposed repeal of the rules.

The repeal is adopted under the Government Code, §441.112, which authorizes the commission to acquire and distribute print access aids at no cost to public libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606067

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: November 26, 2006

Proposal publication date: September 15, 2006

For further information, please call: (512) 463-5459



## **TITLE 22. EXAMINING BOARDS**

### **PART 14. TEXAS OPTOMETRY BOARD**

#### **CHAPTER 273. GENERAL RULES**

##### **22 TAC §273.4**

The Texas Optometry Board adopts amendments to §273.4, without changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7218).

The amendments raise the license renewal fees by \$2.00 in order to provide funding for the appropriations made by the 79th Legislature. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely obtain continuing education, since these fees are based on the license renewal fee.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304 and 351.308. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, and §351.308 as setting the fee for delayed continuing education compliance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2006.

TRD-200606068

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: November 26, 2006

Proposal publication date: September 8, 2006

For further information, please call: (512) 305-8502



## **TITLE 25. HEALTH SERVICES**

# PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 289. RADIATION CONTROL SUBCHAPTER E. REGISTRATION REGULATIONS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §289.230, concerning certification of mammography systems and accreditation of mammography facilities and new §289.230, concerning certification of mammography systems and mammography machines used for interventional breast radiography. New §289.230 is adopted with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5014). The repeal of §289.230 is adopted without change and, therefore, the section will not be republished.

### BACKGROUND AND PURPOSE

Section 289.230 concerning certification of mammography systems and accreditation of mammography facilities is being repealed and divided into two new rules, one concerning certification and the other concerning accreditation. The repeal and new rule are the result of the agency applying to the United States Food and Drug Administration (FDA) to become a certifying body for mammography facilities. The FDA recommended that the current rules be separated into certification and accreditation rules for clarification, as all mammography facilities in the state must have certification with the agency, while accreditation may be with the agency or with the American College of Radiology. Certification requirements will be located in §289.230, "Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography." The accreditation requirements will be incorporated into new §289.234, "Mammography Accreditation," that is addressed in a separate preamble.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.230 has been reviewed and the department has determined that reasons for adopting the section continue to exist because rules on this subject are needed.

### SECTION-BY-SECTION SUMMARY

The new section adds definitions for agency accreditation body, agency certifying body, practitioner of the healing arts, and provisional certificate to define terms used in this section. Definitions for certification, mean optical density, medical physicist, and targeted clinical image review are revised to be consistent with the FDA's Mammography Quality Standards Act (MQSA) rules. Requirements for certification that are consistent with FDA certification are added. Adding these requirements will allow the agency to become a certifying body for mammography facilities. In subsection (f)(3), the words "a licensed physician" is changed to "the lead interpreting physician" to be more specific about the signature required on the application for certification. Requirements for suspension or revocation of facility certification, denials of certification, and repeals are included. Requirements for machines used for interventional breast radiography are revised. In subsection (n)(2), the requirement to notify the agency and submit documentation of qualifications for all personnel changes has been revised. The new language requires written notification of

the change to the agency and submission of documentation of qualifications only for the radiation safety officer. There is clarification that facilities utilizing physicians and technologists from temporary agencies must meet qualification standards.

In subsection (o)(2), language has been added to clarify and delineate the documentation required for the renewal process. Subsection (o)(3) is revised to clarify that a mammography facility that has applied for renewal may continue to perform mammography until the application status has been determined by the agency. In subsection (r)(1)(C)(i) and (2)(C)(i), language requiring that continuing education units must include at least six hours of education in each modality has been deleted since it is no longer required by MQSA rules. In subsection (r)(1)(D)(i) and (3)(D)(i), the word "and" at the end of the clause was replaced by "and/or" to clarify that either clause (i) or (ii) or both may apply. Language on holding patients or image receptors during an exam and use of protective devices is added. Record-keeping requirements are revised to be consistent with those of the FDA. This includes the time required for keeping medical physicist qualifications in Figure: 25 TAC §289.230(ff)(3).

### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: University of Texas Southwestern and the FDA. The commenters were neither for nor against the rule in its entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §289.230(r)(1)(D)(i), one commenter suggested that the language be clarified or corrected following §289.230(r)(1)(D) to "one of the following" or "both of the following" to differentiate between clauses (i) and (ii).

Response: The commission agrees and changed the word "and" following §289.230(r)(1)(D)(i) to "and/or" for clarification.

Comment: Concerning the chart in §289.230(ff)(3), relating to subsection (r)(3)(A), the commenter stated that the record-keeping requirements for the medical physicist qualifications are less stringent than those of the Mammography Quality Standards Act (MQSA), Title 21, Code of Federal Regulations (CFR), Subchapter I.

Response: The commission agrees and changed the requirements to be consistent with the MQSA.

Comment: Concerning §289.230(gg)(6) - (10), a commenter expressed concern that the use of any Level 1 violation for triggering a patient notification is significantly more stringent than the MQSA final regulations (Title 21, CFR, Part 900). The commenter further states that under 21 CFR, §900.12(j), an additional mammography review (AMR) is used to assist the FDA in determining if the quality of mammography performed by the facility presents a serious risk to human health and whether it needs to require a facility to conduct a patient/physician notification. The commenter also indicates that if every facility in Texas were counted as having conducted a patient/physician notification, the theoretical number of notifications would have dwarfed the actual number of notifications conducted nationwide in the last three years.

Response: The commission acknowledges the comment. The requirement for patient notification following a Level I violation

is required by state statute. The rule requires notification of patients on whom the facility performed a mammogram during the 30 days preceding the date of the inspection that revealed the failure. The department conducted two patient notifications for calendar years 2004 and 2005. Both were the result of AMRs performed at these facilities. A facility that is required to notify patients indicates in the notification that it is being done at the direction of the Department of State Health Services. No change was made as a result of the comment.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes.

Change: Concerning §289.230(f)(3), the department changed the words from "a licensed physician" to "the lead interpreting physician" to be more specific about the signature required on the application for certification.

Change: Concerning §289.230(n)(2), the department revised the requirement to submit documentation of qualifications for all personnel changes. The new language requires written notification of any change in §289.230(n)(2)(B) - (E) to the agency and submission of documentation of qualifications is required for the radiation safety officer only. Facilities are required to maintain copies of qualifications of all personnel for annual inspection by the agency. This change will relieve facilities of submitting the documentation to the agency.

Change: Concerning new §289.230(o)(2), for clarification, the department added language that delineates the documentation required for the renewal process instead of referencing a subsection.

Change: Concerning new §289.230(o)(3) (old §289.230(o)(2)), the department revised the language to clarify that a mammography facility that has applied for renewal may continue to perform mammography until the application status has been determined by the agency. This would include the accreditation status as determined by an FDA-approved accreditation body. The subsequent paragraph was renumbered.

Change: Concerning §289.230(r)(1)(C)(i), the department deleted the requirement that continuing education units for interpreting physicians must include at least six hours of education in each modality since this is no longer required by the FDA.

Change: Concerning §289.230(r)(2)(C)(i), the department deleted the requirement that continuing education units for medical radiologic technologists must include at least six hours of education in each modality since this is no longer required by the FDA.

Change: Concerning §289.230(r)(3)(D)(i), the department deleted the word "and" at the end of clause (i) and replaced it with "and/or" to clarify that either clause (i) or (ii) or both may apply.

Change: Concerning the chart in §289.230(ff)(3), relating to subsection (ff)(2)(I), the department added §289.231 to the list of rules as it was inadvertently not included.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### 25 TAC §289.230

#### STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2006.

TRD-200606064

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 1, 2007

Proposal publication date: June 23, 2006

For further information, please call: (512) 458-7111 x6972



#### 25 TAC §289.230

#### STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

*§289.230. Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography.*

##### (a) Purpose.

(1) This section provides for the certification of mammography systems and mammography machines used for interventional breast radiography. No person shall use radiation machines for mammography of humans or for interventional breast radiography except as authorized in a certification issued by the agency in accordance with the requirements of this section. Certification by this agency includes certification of mammography systems and facilities that have received accreditation by the agency accreditation body or by another United States Food and Drug Administration (FDA)-approved accreditation body and certification of mammography machines used for interventional breast radiography.

(2) The use of all mammography machines certified in accordance with this section shall be by or under the supervision of a physician licensed by the Texas Medical Board.

##### (b) Scope.

(1) In addition to the requirements of this section, all registrants are subject to the requirements of §289.203 of this title (re-



lating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). Mammography facilities choosing to be accredited by the agency accreditation body will be subject to §289.234 of this title (relating to Mammography Accreditation).

(2) The procedures found in §289.205 of this title for modifications, suspensions, revocations, denials, and hearings regarding certificates of registration are applicable to certifications issued by the agency.

(3) This section does not apply to an entity under the jurisdiction of the federal government.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation--An approval of a mammography machine within a mammography facility by an accreditation body. A facility may be accredited by the agency accreditation body or another FDA-approved accreditation body.

(2) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(3) Action limit--The minimum or maximum value of a quality assurance measurement representing acceptable performance. Values less than the minimum or greater than the maximum action limit indicate that corrective action must be taken by the facility.

(4) Additional mammography review (includes targeted clinical image reviews)--At the request of the agency certification body or an FDA-approved accreditation body, a review by the FDA-approved accreditation body of clinical images and other relevant facility information necessary to assess conformation with the accreditation standards. The reviews include the following:

(A) clinical image review with interpretation; or

(B) clinical image review without interpretation.

(5) Adverse event--An undesirable experience associated with mammography activities within the scope of this section. Adverse events include but are not limited to:

(A) poor image quality;

(B) failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(C) use of personnel who do not meet the applicable requirements of subsection (r) of this section.

(6) Agency accreditation body--For the purpose of this section, the agency as approved by the FDA under Title 21, Code of Federal Regulations (CFR), Part 900.3(d) to accredit mammography facilities in the State of Texas.

(7) Agency certifying body--For the purpose of this section, the agency, as approved by FDA, under Title 21, CFR, Part 900.21, to certify facilities within the State of Texas to perform mammography services.

(8) Air kerma--The kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For x-rays

with energies less than 300 kiloelectronvolts (keV), 1 Gy = 100 rad. In air, 1 Gy of absorbed dose is delivered by 114 roentgens (R) of exposure.

(9) Automatic exposure control (AEC)--A device that automatically controls one or more technique factors in order to obtain at preselected locations a required quantity of radiation.

(10) Average glandular dose--The average absorbed dose accruing to the glandular tissue of the breast.

(11) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(12) Breast implant--A prosthetic device implanted in the breast.

(13) Calendar quarter--Any one of the following time periods during a given year: January 1 - March 31, April 1 - June 30, July 1 - September 30, or October 1 - December 31.

(14) Calibration of instruments--The comparative response or reading of an instrument relative to a series of known radiation values over the range of the instrument.

(15) Category I continuing medical education units (CMEU)--Educational activities designated as Category I and approved by the Accreditation Council for Continuing Medical Education, the American Osteopathic Association, a state medical society, or an equivalent organization.

(16) Certification--An authorization for the use of a mammography system or mammography machines used for interventional breast radiography.

(17) Clinical image--See the definition for mammogram.

(18) Contact hour--An hour of training received through direct instruction.

(19) Continuing education unit (CEU)--One contact hour of training.

(20) Control panel--That part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

(21) Direct instruction--Instruction that includes:

(A) face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

(B) the administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

(22) Direct supervision--Oversight of operations that include the following.

(A) During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's record.

(B) During performance of a mammography examination, the supervising medical radiologic technologist is present to observe and correct, as needed, the individual who is performing the examination.

(C) During performance of a survey of the registrant's equipment and quality assurance program, the supervising medical physicist is present to observe, and correct, as needed, the individual who is conducting the survey.

(23) Established operating level--The value of a particular quality assurance parameter that has been established as an acceptable normal level by the registrant's quality assurance program.

(24) Facility--A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including the following:

- (A) the operation of equipment to produce a mammogram;
- (B) processing of film;
- (C) initial interpretation of the mammogram; or
- (D) maintaining the viewing conditions for that interpretation.

(25) FDA-approved accreditation body--An entity approved by the FDA under Title 21, CFR, Part 900.3(d), to accredit mammography facilities.

(26) Final assessment categories--The overall final assessment of findings in a report of a mammography examination, classified in one of the following categories:

(A) "negative" indicates nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained);

(B) "benign" is also a negative assessment;

(C) "probably benign" indicates a finding(s) that has a high probability of being benign;

(D) "suspicious abnormality" indicates a finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;

(E) "highly suggestive of malignancy" indicates a finding(s) that has a high probability of being malignant;

(F) "known biopsy proven malignancy" indicates appropriate action should be taken;

(G) "post procedure mammogram" indicates a mammogram to confirm the deployment and position of a breast tissue marker; or

(H) "incomplete" indicates there is a need for additional imaging evaluation and/or prior mammograms for comparison. Reasons why no assessment can be made shall be stated by the interpreting physician.

(27) First allowable time--The earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body.

(28) Formal training--Attendance and participation in direct instruction. This does not include self-study programs.

(29) Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any that might be present initially in the beam concerned, is deemed to be excluded.

(30) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(31) Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(32) Institutional review board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(33) Interpreting physician--A licensed physician who interprets mammographic images and who meets the requirements of subsection (r)(1) of this section.

(34) Interventional breast radiography--Imaging of a breast during invasive interventions for localization or biopsy procedures.

(35) Investigational device exemption--An exemption that allows the investigational device to be used in a clinical study in order to collect safety and effectiveness data required to support a Premarket Approval application or a 501(k) Premarket Notification submission to FDA.

(36) Kerma--The sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

(37) Laterality--The designation of either the right or left breast.

(38) Lead interpreting physician--The interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of subsections (u), (v), and (w) of this section.

(39) Mammogram--A radiographic image produced through mammography.

(40) Mammographic modality--A technology for radiography of the breast. Examples are screen-film mammography and full-field digital mammography.

(41) Mammography--The use of x-radiation to produce an image of the breast that may be used to detect the presence of pathological conditions of the breast. For the purposes of this section, mammography does not include radiography of the breast performed as follows:

(A) during invasive interventions for localization or biopsy procedures except as specified in subsection (bb) of this section; or

(B) with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations.

(42) Mammography machine(s)--A unit consisting of components assembled for the production of x-rays for use during mammography. These include, at a minimum, the following:

(A) an x-ray generator;

(B) an x-ray control;

(C) a tube housing assembly;

(D) a beam limiting device; and

(E) supporting structures.

(43) Mammography medical outcomes audit--A systematic collection of mammography results compared with outcomes data.

(44) Mammography system--A system that includes the following:

(A) an x-ray machine used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging-processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiologic technologist who performs mammography; and

(F) a physician who engages in mammography and who meets the requirements of this section relating to the reading, evaluation, and interpretation of mammograms.

(45) Mandatory training--Additional training required by the agency certifying body or FDA-approved accreditation body for interpreting physicians, medical radiologic technologists, or medical physicists as the result of a required corrective action.

(46) Mean optical density--The average of the optical densities measured using uniform, defect-free absorber thicknesses of 2, 4, and 6 centimeters (cm) with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

(47) Medical physicist--An individual who performs surveys and evaluations of mammographic equipment and facility quality assurance programs in accordance with this section and who meets the qualifications in subsection (r)(3) of this section.

(48) Medical radiologic technologist (operator of equipment)--An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations, who performs mammography examinations in accordance with this section and who meets the qualifications in subsection (r)(2) of this section.

(49) Mobile service operation--The provision of mammography machines and personnel at temporary sites for limited time periods.

(50) Multi-reading--Two or more physicians interpreting the same mammogram. At least one physician shall be qualified as an interpreting physician.

(51) Optical density (OD)--A measure of the fraction of incident light transmitted through a developed film and defined by the equation:

Figure: 25 TAC §289.230(c)(51)

(52) Patient--Any individual who undergoes a mammography examination in a facility, regardless of whether the person is referred by a physician or is self-referred.

(53) Phantom--A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(54) Phantom image--A radiographic image of a phantom.

(55) Physical science--This includes physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(56) Positive mammogram--A mammogram that has an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

(57) Practitioner of the healing arts (practitioner)--For the purposes of this section, a person licensed to practice healing arts by the Texas Medical Board as a physician.

(58) Provisional certification--A provisional authorization described in subsection (g) of this section.

(59) Qualified instructor--An individual whose training and experience prepares him or her to carry out specified training assignments. Interpreting physicians, medical radiologic technologists, or medical physicists who meet the requirements of subsection (r) of this section would be considered qualified instructors in their respective areas of mammography. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the requirements of this section include, but are not limited to, instructors in a post-high school training institution and manufacturers' representatives.

(60) Quality control technologist--An individual meeting the requirements of subsection (r)(2) of this section who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

(61) Radiation machine--For the purposes of this part, radiation machine also means mammography machine.

(62) Self-referral mammography--The use of x-radiation to test asymptomatic women for the detection of diseases of the breasts when such tests are not specifically and individually ordered by a licensed physician.

(63) Serious adverse event--An adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(64) Serious complaint--A report of a serious adverse event.

(65) Source-to-image receptor distance (SID)--The distance from the source to the center of the input surface of the image receptor.

(66) Standard breast--A 4.2 cm thick compressed breast consisting of 50% glandular and 50% adipose tissue.

(67) Survey--An on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(68) Technique chart--A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs.

(69) Traceable to a national standard--Calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every two years. The results of the proficiency test conducted within 24 months of calibration shall show agreement within plus or minus 3.0% of the national standard in the mammography energy range.

(d) Prohibitions.

(1) Radiographic equipment designed for general purpose or special nonmammography procedures shall not be used for mammography. This includes systems that have been modified or equipped with special attachments for mammography.

(2) The agency may prohibit use of mammography machines that pose a significant threat or endanger public health and safety, in accordance with §289.231 of this title and §289.205 of this title.

(3) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed physician. This provision specifically prohibits intentional exposure for the following purposes:

(A) exposure of an individual for training, demonstration, or other non-healing arts purposes;

(B) exposure of an individual for the purpose of healing arts screening (self referral mammography) except as authorized by subsection (cc) of this section; and

(C) exposure of an individual for the purpose of research except as authorized by subsection (dd) of this section.

(e) Exemptions.

(1) Mammography machines or cabinet x-ray machines used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These machines are required to meet applicable provisions of §289.226 of this title and §289.228 of this title (relating to Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines).

(2) Mammography machines used exclusively for interventional breast radiography are exempt from the requirements of this section except for those listed in subsection (bb) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.

(3) Loaner machines as described in subsection (n)(5) of this section are exempt from the inspection requirements in subsection (gg) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.

(4) Mammography machines with investigational device exemptions as described in subsection (dd) of this section and used in clinical studies are exempt from the requirements of this chapter. These machines are not required to be accredited by an FDA-approved accreditation body.

(5) All mammography registrants are exempt from the posting of radiation area requirements of §289.231(x) of this title provided that the operator has continuous surveillance and access control of the radiation area.

(f) Requirements for mammography systems certification.

(1) To obtain a certification, facilities shall meet the quality standards in subsections (r) - (aa) of this section and be accredited by an FDA-approved accreditation body. In order to qualify for certification, new facilities must apply to the agency certifying body in accordance with the following requirements and to an FDA-approved accreditation body and receive acceptance of the accreditation application. If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in this subsection and §289.234(d) of this title.

(2) Each person having a mammography machine shall submit an application in accordance with §289.226(e)(1) - (3) and (5) - (7) and (f)(4) - (5) of this title, and receive certification from the agency certifying body before beginning use of the mammography machine on humans.

(3) An application for certification shall be signed by the lead interpreting physician. The signature of the applicant and the radiation safety officer (RSO) shall also be required.

(4) An application for certification may contain information on multiple mammography machines. Each mammography machine must be identified by referring to the machine's manufacturer,

model number, and serial number of the control panel. If this is not a new certification, the registrant shall maintain and provide proof of current accreditation. If accreditation expires before the expiration of the certification, the registrant shall submit proof of renewed status to the agency.

(5) Each applicant shall submit documentation of the following:

(A) personnel qualifications, including dates of licensure or certification, in accordance with subsection (r) of this section;

(B) manufacturer, model, and serial number of each mammography machine control panel;

(C) evidence that a medical physicist:

(i) has determined that each machine meets the equipment standards in subsection (s) of this section;

(ii) has performed a survey and a mammography equipment evaluation in accordance with subsection (v)(10) and (11) of this section; and

(iii) has determined that the average glandular dose for one craniocaudal-caudal view for each machine does not exceed the value in subsection (v)(5)(F) of this section;

(D) self-referral program information in accordance with subsection (cc) of this section, if the facility offers self-referral mammography; and

(E) items required for authorization of a mobile service operation in accordance with §289.226(g) of this title, if the facility provides a mobile service.

(g) Issuance of certification and provisional certification.

(1) Certification. A certification will be issued if the agency certifying body determines that an application meets the requirements of the Act and the requirements of this chapter. The certification authorizes the proposed activity in such form and contains such conditions and limitations as the agency certifying body deems appropriate or necessary. The certification may include one or both of the following:

(A) mammography systems and facilities certification, following approval of accreditation by an FDA-approved accreditation body; or

(B) certification of mammography machines used for interventional breast radiography.

(2) Requirements and conditions. The agency certifying body may incorporate in the certification at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of radiation machines subject to this section.

(3) Additional information. The agency certifying body may request, and the registrant shall provide, additional information after the certification has been issued to enable the agency certifying

body to determine whether the certification should be modified in accordance with §289.226(r) of this title.

(4) Provisional certification application. A new facility is eligible to apply for a provisional certification. The provisional certification will enable the facility to perform mammography and to obtain the clinical images needed to complete the accreditation process. To apply for and receive a provisional certification, a facility must meet the requirements of this chapter and submit the necessary information to an FDA-approved accreditation body. If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in subsection (f) of this section and §289.234(d) of this title to the agency accreditation body.

(5) Issuing provisional certifications. Following the agency certifying body's receipt of the accreditation body's decision that a facility has submitted the required information, the agency certifying body may issue a provisional certification to a facility upon determination that the facility has satisfied the requirements of the Act and this chapter. A provisional certification shall be effective for up to six months from the date of issuance. A provisional certification cannot be renewed, but a facility may apply for a 90-day extension of the provisional certification.

(6) Extension of provisional certification. Extension of provisional certifications shall be in accordance with the following.

(A) To apply for a 90-day extension to a provisional certification, a facility shall submit to the FDA-approved accreditation body who issued the original certificate, a statement of what the facility is doing to obtain certification and evidence that there would be a significant adverse impact on access to mammography in the geographic area served if such facility did not obtain an extension.

(B) The agency certifying body may issue a 90-day extension for a provisional certification upon determination that the extension meets the criteria in paragraph (4) of this subsection.

(C) There can be no renewal of a provisional certification beyond the 90-day extension.

(7) Reinstatement policy. A previously certified facility that has allowed its certification to expire, that has been refused a renewal of its certification by the agency certifying body, or that has had its certification suspended or revoked by the agency certifying body, may reapply to have the certification reinstated so that the facility may be considered to be a new facility and thereby be eligible for a provisional certification.

(A) Unless prohibited from reinstatement under subsection (h)(5) of this section, a facility applying for reinstatement shall:

(i) contact an FDA-approved accreditation body for reapplication for accreditation;

(ii) fully document its history as a previously provisionally certified or certified mammography facility, including the following information:

(I) name and address of the facility under which it was previously provisionally certified or certified;

(II) name of previous owner/lessor;

(III) facility identification number assigned to the facility under its previous certification by the FDA or the agency certifying body; and

(IV) expiration date of the most recent FDA or agency provisional certification; and

(iii) justify application for reinstatement of accreditation by submitting to an FDA-approved accreditation body a corrective action plan that details how the facility has corrected deficiencies that contributed to the lapse of, denial of renewal, or revocation of its certification.

(B) The agency certifying body may issue a provisional certification to the facility if the agency determines that the facility:

(i) has adequately corrected, or is in the process of correcting, pertinent deficiencies; and

(ii) has taken sufficient corrective action since the lapse of, denial of renewal, or revocation of its previous certification.

(C) After receiving the provisional certification, the facility may lawfully perform mammography while completing the requirements for accreditation and certification.

(h) Suspension or revocation of certification.

(1) Except as provided in paragraph (2) of this subsection, the agency certifying body may suspend or revoke a certification issued by the agency certification body if it finds, after providing the owner or operator of the facility with notice and opportunity for a hearing in accordance with §289.205 of this title, that the owner, operator, or any employee of the facility:

(A) has been guilty of misrepresentation in obtaining the certification;

(B) has failed to comply with the requirements of this chapter;

(C) has failed to comply with requests of the agency certifying body or an FDA-approved accreditation body for records, information, reports, or materials that are necessary to determine the continued eligibility of the facility for a certification or continued compliance with the requirements of this chapter;

(D) has refused a request of a duly designated FDA inspector, state inspector, or an FDA-approved accreditation body representative for permission to inspect the facility or the operations and pertinent records of the facility;

(E) has violated or aided and abetted in the violation of any provision of or regulation promulgated pursuant to the requirements of the Act and the requirements of this chapter; or

(F) has failed to comply with prior sanctions imposed by the agency certifying body under §289.205 of this title.

(2) The agency certifying body may suspend a certification of a facility before holding a hearing if it makes a finding described in paragraph (1) of this subsection and also determines that:

(A) the failure to comply with requirements presents a serious risk to human health;

(B) the refusal to permit inspection makes immediate suspension necessary; or

(C) there is reason to believe that the violation or aiding and abetting of the violation was intentional or associated with fraud.

(3) If the agency certifying body suspends a certification in accordance with paragraph (2) of this subsection:

(A) the agency certifying body shall provide the facility with an opportunity for a hearing under §289.205 not later than 60 days from the effective date of this suspension; and

(B) the suspension shall remain in effect until the agency certifying body determines that:

(i) allegations of violations or misconduct were not substantiated;

(ii) violations of requirements have been corrected to the agency certifying body's satisfaction; or

(iii) the certification is revoked in accordance with paragraph (4) of this section.

(4) After providing a hearing in accordance with paragraph (3)(A) of this subsection, the agency certifying body may revoke the certification if the agency determines that the facility:

(A) is unwilling or unable to correct violations that were the basis for suspension; or

(B) has engaged in fraudulent activity to obtain or continue certification.

(5) If a facility's certification was revoked on the basis of an act described in §289.205 of this title, no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility within two years of the date of revocation.

(i) Appeal of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(1) The appeal process described in this subsection is available only for adverse accreditation or reaccreditation decisions that preclude certification by the agency certifying body. Agency certifying body decisions to suspend or revoke certificates that are already in effect will be handled in accordance with subsection (h) of this section.

(2) Upon learning that a facility has failed to become accredited or reaccredited, the agency certifying body will notify the facility that the agency certifying body is unable to certify that facility without proof of accreditation.

(3) A facility that has been denied accreditation or reaccreditation and cannot achieve satisfactory resolution of an adverse accreditation decision through the FDA-approved accreditation body's appeal process is entitled to further appeal to the FDA.

(4) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

(j) Denial of certification.

(1) The agency certifying body may deny the application if the agency certifying body has reason to believe that:

(A) the facility will not be operated in accordance with the provisions of subsections (r) - (aa) of this section;

(B) the facility will not permit inspections or provide access to records or information in a timely fashion;

(C) any material false statement in the application or any statement of fact required under provision of the Act was made;

(D) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency certification body to refuse to grant a certification of mammography facility on an original application; or

(E) the facility failed to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(2) Before the agency certification body denies an application for certification, the agency shall give notice of the denial, the facts warranting the denial, and shall afford the applicant an opportunity for a hearing in accordance with §289.205(h) of this title. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of date of receipt of the notice, the agency may proceed

to deny. The applicant shall have the burden of proof showing cause why the application should not be denied.

(3) If the agency certifying body denies an application for certification by a facility that has received accreditation from an FDA-approved accreditation body, the agency certifying body shall provide the facility with a written statement of the grounds on which the denial is based.

(k) Appeals of denial of certification.

(1) The appeals procedures described in this subsection are available only to facilities that are denied certification by the agency certifying body after they have been accredited by an FDA-approved accreditation body. Appeals for facilities that have failed to become accredited with the agency accreditation body shall be in accordance with §289.234(h) of this title.

(2) A facility that has been denied certification may request reconsideration and appeal of the agency certifying body's determination in accordance with the applicable provisions of §289.205 of this title.

(l) Modification of certification. Modification of certification shall be in accordance with §289.226(r) of this title.

(m) Specific terms and conditions of certification. Specific terms and conditions of certification shall be in accordance with §289.226(l) of this title.

(n) Responsibilities of registrant.

(1) In addition to the requirements of §289.226(m)(3) - (7) of this title, a registrant shall notify the agency certifying body in writing prior to any changes that would render the information contained in the application or the certification inaccurate. These include but are not limited to the following:

(A) name and mailing address;

(B) street address where machine(s) will be used; and

(C) mammography machines.

(2) Prior to employing the individuals listed in subparagraphs (A) - (E) of this paragraph, the registrant is required to verify and maintain copies of their qualifications. If a facility makes a change in the RSO, the qualifications of the RSO shall be submitted to the agency within 30 days of such change. Written notification of a change in any of the following in subparagraphs (B) - (E) of this paragraph is required within 30 days of such change:

(A) radiation safety officer;

(B) lead interpreting physician;

(C) interpreting physicians;

(D) medical radiologic technologists; or

(E) medical physicist.

(3) Registrants utilizing interpreting physicians or technologists from a temporary service shall verify and maintain copies of the qualifications of these individuals for inspection by the agency. The registrant does not need to notify the agency certifying body unless these personnel will be at the facility for a period exceeding four weeks.

(4) All mammography facilities installing new or replacement mammography machines shall have either current accreditation or have submitted an application to an FDA-approved accreditation body for review unless exempted by subsection (e)(1) - (3) of this section. A mammography machine shall not be used to perform mam-

mograms if an application for accreditation for that machine has been denied, or if the accreditation has been suspended or expired.

(5) A facility with an existing certification may begin using a new or replacement machine before receiving an updated certification if the registrant submits to the agency certifying body and to the FDA-approved accreditation body, documentation with a medical physicist's report in accordance with subsection (v)(10) and (11) of this section, verifying compliance of the new machine with this section. The medical physicist's report is required prior to using the machine on patients.

(6) Loaner mammography machines may be used on patients for 60 days without adding the mammography machine to the certification. A medical physicist's report verifying compliance of the loaner mammography machine with this section shall be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use. If the use period will exceed 60 days, the facility shall add the mammography machine to its certification and a fee will be assessed.

(7) Records of training and experience and all other records required by this section shall be maintained for review in accordance with subsection (ff) of this section.

(o) Renewal of certification.

(1) A certification for a mammography system is valid for three years from the date of issuance unless the certification of the facility is suspended or revoked prior to such deadlines.

(2) A mammography facility filing an application for renewal of their certification shall meet the quality standards in subsections (r) - (aa) of this section and be accredited by an FDA-approved accreditation body. The renewal shall be filed in accordance with the following:

(A) §289.226(e)(1) - (3), (5) and (7) of this title and §289.226(f)(4) and (5) of this title;

(B) signatures of appropriate personnel in accordance with subsection (f)(3) of this section;

(C) machine information and medical physicist's survey in accordance with subsection (f)(5)(B) and (C) of this section;

(D) fees in accordance with §289.204 of this title; and

(E) a list of all interpreting physicians, medical radiologic technologists and medical physicists practicing at the facility.

(3) A mammography facility filing an application for renewal before the existing certification expires may continue to perform mammography until the application status has been determined by the agency.

(4) A facility with mammography machines used for interventional breast radiography shall file an application for renewal in accordance with subsection (bb)(9) of this section and pay the fee required by §289.204 of this title.

(p) Expiration of certification.

(1) Except as provided by subsection (o) of this section, each certification expires at the end of the day in the month and year stated on the certificate of registration. Expiration of the certification does not relieve the registrant of the requirements of this chapter.

(2) If a registrant does not submit an application for renewal of the certification under subsection (o) of this section, as applicable, the registrant shall on or before the expiration date specified in the certification:

(A) terminate use of all mammography machines;

(B) notify the agency certifying body in writing of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4) of this section will be met;

(C) pay any outstanding fees in accordance with §289.204 of this title; and

(D) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.

(q) Termination of certification. When a registrant decides to terminate all activities involving mammography machines authorized under the certification, the registrant shall:

(1) notify the agency certifying body and the FDA-approved accreditation body immediately;

(2) request termination of the certification in writing;

(3) pay any outstanding fees in accordance with §289.204 of this title;

(4) notify the agency certifying body, in writing, of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4) of this section will be met; and

(5) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.

(r) Personnel qualifications. The following requirements apply to all personnel involved in any aspect of mammography, including the production and interpretation of mammograms.

(1) Interpreting physician. Each physician interpreting mammograms shall hold a current Texas license issued by the Texas Medical Board and meet the following qualifications.

(A) Initial qualifications. Before interpreting mammograms independently, the physician shall:

(i) be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or one of the other bodies approved by the FDA to certify interpreting physicians or have at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography in accordance with subsection (hh)(2) of this section;

(ii) have had a minimum of 60 hours of documented category I CMEUs in mammography. At least 15 of the 60 hours shall have been acquired within three years immediately prior to the date that the physician qualified as an interpreting physician. Hours spent in residency specifically devoted to mammography will be equivalent to category I CMEUs and accepted if documented in writing by the appropriate representative of the training institution; and

(iii) have interpreted or multi-read, under the direct supervision of an interpreting physician, at least 240 mammographic examinations within the six-month period immediately prior to the date that the physician qualifies as an interpreting physician.

(B) Exemptions.

(i) Physicians who qualified as interpreting physicians in accordance with the requirements of §289.230 that were in effect prior to April 28, 1999, or any other equivalent state or federal requirements in effect prior to April 28, 1999, are considered to have met the initial requirements of subparagraph (A) of this paragraph.

(ii) Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any six month period during the last two years of a diagnostic radiology residency and who became board certified at the first allowable time, are exempt from subparagraph (A)(iii) of this paragraph.

(C) Continuing education and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. These periods begin when a physician completes the requirements to become an interpreting physician in subparagraph (A) of this paragraph. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each interpreting physician shall maintain qualifications by meeting the following requirements:

(i) participating in education programs by completing at least 15 category I CMEUs in mammography or by teaching mammography courses. CMEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

- (I) the date of the registrant's annual inspection;
- (II) the last day of the calendar quarter preceding the inspection; or
- (III) any date in between the two;

(ii) interpreting or multi-reading at least 960 mammographic examinations that must be completed during the 24 months immediately preceding:

- (I) the date of the registrant's annual inspection;
- (II) the last day of the calendar quarter preceding the inspection; or
- (III) any date in between the two; and

(iii) accumulating at least eight hours of CMEUs in any mammography modality in which the interpreting physician has not been previously trained, prior to independently using the new modality.

(D) Re-establishing qualifications. Before resuming independent interpretation of mammograms, interpreting physicians who fail to maintain the required continuing education or experience requirements shall re-establish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtain a sufficient number of additional category I CMEUs to bring their total up to the 15 category I CMEU credits required in the previous 36 months; and/or

(ii) within the six months immediately prior to resuming independent interpretation and under the direct supervision of an interpreting physician, interpret or multi-read one of the following, whichever is less:

- (I) at least 240 mammographic examinations; or
- (II) a sufficient number of mammographic examinations to bring the total up to 960 examinations for the prior 24 months.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently interpreting mammograms. Records of

any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(2) Medical radiologic technologists (operators of equipment). Each person performing mammographic examinations shall have current certification as a medical radiologic technologist under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and shall meet the following qualifications.

(A) Initial requirements. Before performing mammographic examinations, the operator of equipment shall have:

(i) completed a minimum of 40 contact hours of training as outlined in subsection (hh)(1) of this section by a qualified instructor; and

(ii) performed a minimum of 25 mammographic examinations under the direct supervision of an individual qualified in accordance with the requirements of this paragraph. The 25 mammographic examinations may be obtained concurrently with the 40 contact hours of training specified in clause (i) of this subparagraph but shall not exceed 16 hours of the 40 contact hours.

(B) Exemptions. Equipment operators who qualified as medical radiologic technologists to perform mammography in accordance with the requirements of §289.230 that were in effect prior to April 28, 1999, and any other federal requirements in effect prior to April 28, 1999, are considered to have met the initial requirements of subparagraph (A) of this paragraph.

(C) Continuing education and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education begins when a technologist completes the requirements in subparagraph (A) of this paragraph. The period for continuing experience begins when a technologist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical radiologic technologist shall maintain qualifications by meeting the following requirements:

(i) participating in education programs by completing at least 15 CEUs in mammography or by teaching mammography courses. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

- (I) the date of the registrant's annual inspection;
- (II) the last day of the calendar quarter preceding the inspection; or
- (III) any date in between the two;

(ii) performing a minimum of 200 mammographic examinations that must be completed during the 24 months immediately preceding:

- (I) the facility's annual inspection;
- (II) the last day of the calendar quarter preceding the inspection; or
- (III) any date in between the two; and

(iii) accumulating at least eight hours of CEUs in any mammography modality in which the medical radiologic technologist has not been previously trained, prior to independently using the new modality.



(D) **Requalification.** Before resuming independent performance of mammograms, medical radiologic technologists who fail to maintain the continuing education or experience requirements shall re-establish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtaining a sufficient number of additional CEUs to bring their total up to the 15 CEU credits required in the previous 36 months, at least six of which shall be related to each modality used by the technologist in mammography; and/or

(ii) performing a minimum of 25 mammographic examinations under the direct supervision of a qualified medical radiologic technologist.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently performing mammograms. Records of any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(3) **Medical physicist.** Each medical physicist performing mammographic surveys, evaluating mammographic equipment, or providing oversight of the facility quality assurance program in accordance with subsection (u) of this section, shall hold a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in diagnostic radiological physics and be registered with the agency or employed by an entity registered with the agency, in accordance with §289.226(j) of this title and the Act, unless exempted by §289.226(d)(6) of this title. Each medical physicist shall meet the following qualifications.

(A) **Initial qualifications.** Before performing surveys and evaluating mammographic equipment independently, the medical physicist shall:

(i) have a masters degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or equivalent (30 quarter hours) of college undergraduate or graduate level physics;

(ii) have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) have experience conducting surveys of at least one mammography facility and a total of at least ten mammography machines. After April 28, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets the requirements of subparagraphs (A) and (C) of this paragraph. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement.

(B) **Alternative initial qualifications.** Individuals who qualified as a medical physicist in accordance with the requirements of this section that were in effect prior to April 28, 1999, or any other equivalent state or federal requirements in effect prior to April 28, 1999, and have met the following additional qualifications prior to April 28, 1999, are determined to have met the initial qualifications of subparagraph (A) of this paragraph:

(i) a bachelor's degree or higher in a physical science from an accredited institution with no less than ten semester hours or equivalent of college undergraduate or graduate level physics;

(ii) 40 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) experience conducting surveys of at least one mammography facility and a total of at least 20 mammography ma-

chines. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement. The training and experience requirements must be met after fulfilling the degree requirements.

(C) **Continuing education and experience.** The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education will begin when a physicist completes the requirements in subparagraph (A) of this paragraph. The time period for continuing experience will begin when a physicist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical physicist shall maintain his/her qualifications by meeting the following requirements:

(i) participating in education programs, either by teaching or completing at least 15 CEUs in mammography that shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during his or her surveys. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

(I) the date of the registrant's annual inspection;

(II) by the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two;

(ii) performing surveys of two mammography facilities and a total of at least six mammography machines (no more than one survey of a specific facility within a ten-month period or a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement). The continuing experience must be completed during the 24 months immediately preceding:

(I) the date of the facility's annual inspection;

(II) by the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two; and

(iii) accumulating at least eight hours of CEUs in any mammography modality in which the medical physicist has not been previously trained, prior to independently using the new modality.

(D) **Re-establishing qualifications.** Before resuming independent performance of surveys and equipment evaluations, medical physicists who fail to maintain the continuing education or experience requirements shall reestablish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtaining a sufficient number of additional CEUs to bring their total up to the 15 CEU credits required in the previous 36 months; and/or

(ii) performing a sufficient number of surveys, under the direct supervision of a qualified medical physicist, to bring their total up to two mammography facilities and a total of at least six mammography machines for the prior 24 months. No more than one survey of a specific machine within a period of 60 days shall be counted towards the total mammography machine survey requirement.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently performing mammographic surveys, evaluating mammographic equipment, or providing oversight of a facility's quality assurance program. Records of any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(4) Retention of personnel records. Records documenting the qualifications, continuing education, and experience of personnel in subsection (r)(1) - (3) shall be maintained for inspection by the agency in accordance with subsection (ff) of this section.

(s) Equipment standards. Only systems meeting the following standards shall be used.

(1) System design. The equipment shall have been specifically designed and manufactured for mammography and in accordance with Title 21, CFR, §§1010.2, 1020.30, and 1020.31.

(2) Motion of tube-image receptor assembly. The assembly shall be capable of being fixed in any position where it is designed to operate. Once fixed in any such position, it shall not undergo unintended motion. In the event of power interruption, this mechanism shall not fail.

(3) Image receptors. Systems using screen-film image receptors shall, at a minimum, provide for the following:

(A) operation with image receptors of 18 x 24 cm and 24 x 30 cm;

(B) operable moving grids matched to all image receptor sizes provided;

(C) operation with the grid removed from between the source and image receptor for systems used for magnification procedures; and

(D) image receptors to rest, post-loading, 15 minutes between exposures.

(4) Magnification. Systems used to perform noninterventional problem solving procedures shall have radiographic magnification capability available for use with, at a minimum, at least one magnification value within the range of 1.4 to 2.0.

(5) Focal spot and target material selection. Selection of the focal spot or target material shall be as follows.

(A) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(B) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(C) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material and/or focal spot actually used during the exposure.

(6) Compression. All mammography systems shall incorporate a compression device.

(A) Application of compression. Effective October 28, 2002, and thereafter, each system shall provide the following features operable from both sides of the patient:

(i) an initial power-driven compression activated by hands-free controls; and

(ii) fine adjustment compression controls.

(B) Compression paddle.

(i) Systems shall be equipped with different sized compression paddles that match the sizes of all full-field image receptors provided for the system.

(ii) Compression paddles for special purposes, including those smaller than the full size of the image receptor (for example, spot compression) may be provided. Such paddles are not subject to the requirements of clauses (v) and (vi) of this subparagraph.

(iii) Except as provided in clause (iv) of this subparagraph, the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(iv) Equipment intended by the manufacturer's design to not be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(v) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor.

(vi) The chest wall edge may be bent upward to allow for patient comfort, but shall not appear on the image.

(7) Technique factor selection and display. Technique factor selection and display shall be as follows.

(A) Manual selection of milliamperes (mAs) or at least one of its component parts, milliamperes (mA) and/or time, shall be available.

(B) The technique factors (peak tube potential in kilovolts (kV) and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs) to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure control (AEC) is used, in which case the technique factors that are set prior to the exposure shall be indicated.

(C) When the AEC mode is used, the system shall indicate the actual kVp and mAs used during the exposure. The mAs may be displayed as mA and time.

(8) Automatic exposure control. Each screen-film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, for example, contact, magnification, and various image receptor sizes.

(A) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.

(i) The size and available positions of the detector shall be clearly indicated at the x-ray input surface of the breast compression paddle.

(ii) The selected position of the detector shall be clearly indicated.

(B) The system shall provide means to vary the selected optical density from the normal (zero) setting.

(9) X-ray film. The registrant shall use x-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(10) Intensifying screens. The registrant shall use intensifying screens for mammography that have been designated by the screen manufacturer as appropriate for mammography and shall use film that is matched to the screen's spectral output as specified by the manufacturer.

(11) Film processing solutions. For processing mammography films, the registrant shall use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(12) Lighting. The registrant shall make available special lights for film illumination (hot lights) capable of producing light levels greater than that provided by the view box.

(13) Film masking devices. Registrants shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.

(14) Equipment variances. Registrants with mammography equipment that has been issued variances by FDA to Title 21, CFR, §§1020.2, 1020.30, 1020.31, or has had an alternative for a quality standard for equipment approved by the FDA under the provisions of Title 21, CFR, §900.18, shall maintain copies of those variances or alternative standards.

(15) Light fields. For any mammography system with a light beam that passes through the x-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

(t) Medical records and mammography reports.

(1) Contents and terminology. Each registrant shall prepare a written report of the results of each mammography examination that shall include the following information:

(A) name of the patient and an additional patient identifier;

(B) date of the examination;

(C) name and signature of the interpreting physician who interpreted the mammogram (electronic signatures are acceptable);

(D) overall final assessment of findings using the final assessment categories as defined in subsection (c) of this section; and

(E) recommendations made to the physician about what additional actions, if any, should be taken. All clinical questions raised by the referring physician shall be addressed in the report to the extent possible, even if the assessment is negative or benign.

(2) Communication of mammography results to the patient and health care providers or physicians, as applicable. Each registrant shall send reports as soon as possible, but no later than 30 days from the date of the mammography examination, to:

(A) patients advising them of the results of the mammography examination and any further medical needs indicated. The report shall include a summary written in language easily understood by a lay person; and

(B) referring physicians, or in the case of self-referral, to the physician indicated by the patient, advising them of the results of the mammography examination, containing the information specified in paragraph (1) of this subsection, and any further medical needs indicated.

(3) Follow-up with patients and physicians. Each registrant shall follow-up to confirm the following:

(A) that patients with positive findings and patients needing repeat exams have received proper notification; and

(B) that physicians have received proper notification of patients with positive findings or needing repeat exams.

(4) Retention of clinical images.

(A) Each registrant that performs mammograms shall maintain mammography films and reports in a permanent medical record for a minimum of five years. If no additional mammograms of the patient are performed at the facility, the films and reports shall be maintained for a minimum of ten years.

(B) Each registrant that performs mammograms shall, within 30 days of request by or on behalf of the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, a physician, or to the patient directly.

(C) If the medical records are permanently forwarded, the receiving institution or physician shall maintain and become responsible for the original film until the fifth or tenth anniversary, as specified in subparagraph (A) of this paragraph.

(5) Mammographic image identification. Each mammographic image shall have the following information indicated on it in a permanent, legible manner and placed so as not to obscure anatomic structures:

(A) name of patient and an additional patient identifier;

(B) date of examination;

(C) view and laterality (this information shall be placed on the image in a position near the axilla);

(D) facility name and location (at a minimum the location shall include city, state, and zip code);

(E) technologist identification;

(F) cassette/screen identification; and

(G) mammography machine identification if there is more than one machine in the facility.

(6) Information shall also be maintained for each clinical image by utilizing a label on each film, recording on the film jacket, or maintaining a log or other means. The information shall include, but is not limited to, compressed breast thickness or degree of compression, and kVp.

(u) Quality assurance - general. Each registrant shall establish and maintain a written quality assurance program to ensure the safety, reliability, clarity, and accuracy of mammography services performed at the mammography facility, including corrective actions to be taken if images are of poor quality.

(1) Responsible individuals. Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.

(A) Lead interpreting physician. The registrant shall identify a lead interpreting physician who shall have the general responsibility of:

(i) ensuring that the quality assurance program meets all requirements of this subsection and subsections (v) and (w) of this section;

(ii) reviewing and documenting the technologists' quality control test results at least every three months or more frequently if consistency has not yet been achieved;

(iii) reviewing the physicists' results within 60 days of the receipt of the results or more frequently when needed; and

(iv) assigning and determining the individual's qualifications to perform the quality assurance tasks in subparagraphs (B) - (D) of this paragraph.

(B) Interpreting physicians. All interpreting physicians interpreting mammograms for the registrant shall:

(i) follow the registrant's procedures for corrective action when the images they are asked to interpret are of poor quality. These procedures shall be included in the facility's operating and safety procedures; and

(ii) participate in the medical outcomes audit program.

(C) Medical physicist. Each registrant shall use the services of a licensed medical physicist to survey mammography equipment and oversee the equipment-related quality assurance practices of the facility. At a minimum, the medical physicist shall be responsible for performing the surveys and the mammography equipment evaluations and providing the facility with the reports described in subsection (v)(10) and (11) of this section.

(D) Quality control technologist. The quality control technologist, designated by the lead interpreting physician, shall ensure performance of the items designated in subsection (v)(1) - (4), (7) - (9), (12), and (14) of this section. If other personnel are assigned the quality assurance tasks in accordance with subparagraph (A)(iv) of this paragraph, the quality control technologist shall insure that the requirements of subsection (v)(1) - (4), (7) - (9), (12), and (14) of this section are met.

(2) Quality assurance records. The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning mammography technique and procedures, quality control (include monitoring data, corrective actions, and the effectiveness of the corrective actions), safety, protection, and employee qualifications to meet assigned quality assurance tasks are properly maintained and updated. These quality control records shall be kept for each test specified in subsection (v) and (w) of this section, in accordance with subsection (ff) of this section.

(v) Quality assurance - equipment. Registrants with screen-film systems shall perform the following quality control tests at the intervals specified. In addition to the intervals specified in paragraphs (4)(B) and (5)(H) of this subsection, the tests shall be performed prior to initial use.

(1) Daily quality control tests. Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be completed and the results charted on each day that clinical films are processed before any clinical films are processed that day.

(A) Processor performance test. Using mammography film used clinically at the facility, sensitometer tests shall include assessment of the following:

(i) base plus fog density that shall be within plus 0.03 of the established operating level;

(ii) mid-density that shall be within plus or minus 0.15 of the established operating level; and

(iii) density difference that shall be within plus or minus 0.15 of the established operating level.

(B) Film processors being used for mammography at multiple locations, such as a mobile service operation, shall be subject to the requirements of this paragraph.

(C) Film processors utilized for mammography shall be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent.

(D) Each registrant shall utilize the same film processor for clinical and phantom images. Clinical images shall be processed within an interval not to exceed 24 hours from the time the first clinical image is taken. Facilities utilizing batch processing shall do the following:

(i) use a container to transport clinical images that will protect the film from exposure to light and radiation; and

(ii) maintain a log to include each patient name and unique identification number, date, and time of the first exam of each batch, and date and time of batch development.

(2) Weekly quality control tests. These tests shall be performed at an interval no greater than seven days. If mammography is not being performed on the date the test is due and more than seven days have past since the last test, the tests shall be performed prior to resuming mammography. An image quality evaluation test, using an FDA-accepted phantom, shall meet the following parameters.

(A) The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition and shall not change by more than plus or minus 0.20 from the established operating level.

(B) The density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.

(C) The phantom image shall be made on the standard mammographic film in use at the facility with techniques used for clinical images of a standard breast. The phantom image shall meet the requirements in subparagraphs (A) and (B) of this paragraph and clause (i) of this subparagraph. No mammograms shall be taken on patients if any of these minimums are not met.

(i) The mammographic machine shall be capable of producing images of the mammographic phantom in accordance with the phantom image scoring protocol in subsection (hh)(4) of this section or paragraph (7) of this subsection.

(ii) Each phantom image and a record of the evaluation of that image shall be maintained at the location where the mammography image was produced or with the radiographic equipment for mobile service operations.

(3) Quarterly quality control tests. These tests shall be performed within the calendar quarter at an interval not to exceed 90 days.

(A) Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square cm.

(B) Repeat analysis. A repeat analysis on clinical images repeated or rejected shall be performed, analyzed, and documented. The total repeat or reject rate shall not exceed 5.0%. If the total repeat or reject rate changes from the previously determined rate by more than 2.0% of the total films included in the analysis, the reason(s) for the change shall be determined. Corrective action shall be taken and documented if the total repeat or reject rate for the facility exceeds 5.0% or changes from the previously determined rate by more than 2.0% of the total films included in the analysis. Test films,

cleared films, or film processed as a result of exposure of a film bin are not to be included in the count for repeat analysis. Films included in the repeat analysis are not required to be kept after completion of the analysis.

(4) Semiannual quality control tests. These tests shall be performed at an interval not to exceed six months.

(A) Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for two minutes while such film is placed on the counter top, emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.

(B) Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. The entire area of the cassette that may be clinically exposed shall be tested. This shall include all cassettes used for mammography in the facility.

(C) Compression device performance. The maximum compression force for the initial power drive shall be between 25 pounds and 45 pounds. The system shall be capable of compressing the breast with a force of at least 25 pounds and shall be capable of maintaining this compression for at least 15 seconds.

(5) Annual quality control tests. These tests shall be performed at an interval not to exceed (14) months.

(A) Automatic exposure control performance. The AEC shall be capable of maintaining film optical density within plus or minus 0.15 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range and in the AEC mode used clinically in the facility.

(B) Kilovoltage peak accuracy and reproducibility. At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02. The kVp shall be accurate to within plus or minus 5.0% of the indicated or selected kVp at the following:

- (i) the lowest clinical kVp that can be measured by a kVp test device;
- (ii) the most commonly used clinical kVp; and
- (iii) the highest available clinical kVp.

(C) Focal spot condition. Facilities shall evaluate focal spot condition by determining the system resolution as follows.

(i) Each system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 cycles/millimeter (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(ii) The bar pattern shall be placed 4.5 cm above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 cm of the chest wall edge of the image receptor.

(iii) When more than one target material is provided, the measurement in clause (i) of this subparagraph shall be made using the appropriate focal spot for each target material.

(iv) When more than one SID is provided, the test shall be performed at the SID most commonly used clinically.

(v) Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.

(D) Beam quality and half-value layer (HVL). The HVL shall meet the specifications of Title 21, CFR, §1020.30(m)(l) for the minimum HVL. These values, extrapolated to the mammographic range, are shown as follows. This test is performed using the clinical kVp on the standard breast. Values not shown in Table I may be determined by linear interpolation or extrapolation.  
Figure: 25 TAC §289.230(v)(5)(D)

(E) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

(F) Dosimetry. The average glandular dose delivered during a single craniocaudal view of an FDA accepted phantom simulating a standard breast shall not exceed 3.0 milligray (mGy) (0.3 rad) per exposure.

(G) X-ray field/light field/image receptor/compression paddle alignment. All systems shall meet the following.

(i) All systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the x-ray field does not extend beyond any edge of the image receptor by more than 2.0% of the SID.

(ii) If a light field that passes through the x-ray beam limitation device is provided, it shall be aligned with the x-ray field so that the total of any misalignment of the edges of the light field and the x-ray field along either the length or the width of the visually defined field at the plane of the breast support surface shall not exceed 2.0% of the SID.

(iii) The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1.0% of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

(H) Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.

(I) System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.

(J) Radiation output. The system shall be capable of producing a minimum output of 7.0 mGy air kerma per second (800 milliroentgen (mR) per second) when operating at 28 kVp in the standard mammography mode at any SID where the system is designed to operate. The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.

(K) Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure

or interruption of power to the system, the system shall be tested to confirm that it provides the following:

- (i) an override capability to allow maintenance of compression;
- (ii) a continuous display of the override status; and
- (iii) a manual emergency compression release that can be activated in the event of power or automatic release failure.

(L) The technique settings used for subparagraph (F) of this paragraph and paragraph (2) of this subsection shall be those used by the facility for its clinical images of a standard breast.

(6) Densitometer and sensitometer. The calibration of the densitometer and sensitometer must be in accordance with the manufacturer's specifications.

(7) Quality control tests - other modalities. For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in paragraph (5)(F) of this subsection.

(8) Mobile service operation. The registrant shall verify that mammography machines used to produce mammograms at more than one location meet the requirements in paragraphs (1) - (7) of this subsection. In addition, at each examination location, before any examinations are conducted, the registrant shall verify satisfactory performance of the mammography machines by using a test method that establishes the adequacy of the image quality produced by the machine. Processor performance shall be in accordance with paragraph (1) of this subsection.

(9) Use of test results. After completion of the tests specified in paragraphs (1) - (8) of this subsection, the following shall occur:

(A) The registrant shall compare the test results to the corresponding specified action limits; or, for nonscreen-film modalities, to the manufacturer's recommended action limits; or for post-move, pre-examination testing of mobile mammography machines, to the limits established in the test method used by the facility.

(B) Components of the mammography system that fail quality assurance tests shall have corrective actions as indicated in the following.

(i) If components in subclause (I) and (II) of this clause fail, corrective action shall be taken before any mammography films are processed:

(I) paragraph (1) of this subsection describing processor quality control; and

(II) paragraph (4)(A) of this subsection describing darkroom fog;

(ii) If components in subclause (I)-(VI) of this clause fail, corrective action shall be taken before any mammography examinations are performed:

(I) paragraph (2) of this subsection describing phantom image quality;

(II) paragraph (4)(B) of this subsection describing screen-film contact;

(III) paragraph (4)(C) of this subsection describing compression device performance;

(IV) paragraph (5)(F) of this subsection describing dosimetry;

(V) paragraph (7) of this subsection describing quality control tests of other modalities; and

(VI) paragraph (8) of this subsection describing quality control tests for mobile mammography machines.

(iii) If components in the remaining quality assurance tests in subsection (v) of this section fail, corrective action shall be taken within 30 days of the test date.

(C) Documentation of the tests and the corrective actions described in subparagraph (B) of this paragraph shall be maintained in accordance with subsection (ff) of this section.

(10) Surveys. At least once a year, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist.

(A) At a minimum, this survey shall include the following:

(i) performance of tests to ensure that the facility meets the quality assurance requirements of the weekly phantom image quality test described in paragraph (2) of this subsection, the annual tests described in paragraph (5) of this subsection, and if applicable, quality control tests as described for other modalities in paragraph (7) and for mobile service operations as described in paragraph (8) of this subsection; and

(ii) evaluation of the adequacy of the results of all tests conducted by the facility as well as written documentation of any corrective actions taken and their results in accordance with paragraphs (1) - (4) of this subsection, and, if applicable, paragraphs (7) and (8) of this subsection.

(B) The medical physicist shall provide a written survey report to the facility within 30 days of the date of the survey. The report shall include a summary of the tests performed by the medical physicist in subparagraph (A)(i) of this paragraph and the review of the tests performed by the facility in subparagraph (A)(ii) of this paragraph. The report shall also contain recommendations for any required corrective actions.

(C) If the following tests indicate deficiencies, the physicist shall give a preliminary oral or written report to the facility within 72 hours of the survey:

(i) processor quality control in accordance with paragraph (9)(B)(i)(I) of this subsection;

(ii) phantom images, screen-film contact, compression device performance, or dosimetry in accordance with paragraph (9)(B)(ii)(I) - (IV) of this subsection;

(iii) quality control tests for other modalities, if applicable, in accordance with paragraph (9)(B)(ii)(V) of this subsection; or

(iv) quality control tests for mobile mammography machines, if applicable, in accordance with paragraph (9)(B)(ii)(VI) of this subsection.

(D) The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey.

(E) The survey report shall be maintained by the registrant in accordance with subsection (ff) of this section.

(11) Mammography equipment evaluations. Additional evaluations of mammography machines or image processors shall be conducted whenever a new mammography machine or processor is installed, a mammography machine or processor is disassembled and reassembled at the same or a new location, major components of mammography machine are changed or repaired, or a processor is overhauled or reconditioned. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in this subsection and subsection (s) of this section.

(A) All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing.

(B) The mammography equipment evaluation and dosimetry shall be performed by a medical physicist or by an individual under the direct supervision of a medical physicist.

(12) Facility cleanliness. The registrant shall establish and implement adequate protocols for maintaining darkroom, screen, and view box cleanliness and shall document that all cleaning procedures are performed at the frequencies specified in the protocols.

(13) Calibration of air kerma measuring instruments. Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography machine shall be calibrated at least once every two years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of plus or minus 6.0% (95% confidence level) in the mammography energy range.

(14) Infection control. Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

(A) comply with all applicable federal, state, and local regulations pertaining to infection control; and

(B) comply with the manufacturer's recommended procedures for the cleaning and disinfection of the mammography equipment used in the facility; or

(C) if adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

(w) Quality assurance - mammography medical outcomes audit. Each registrant shall establish and maintain a mammography medical outcomes audit program to follow-up positive mammographic assessments and to correlate pathology results with the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) General requirements. Each registrant shall establish a system to collect and review outcome data for all mammograms performed, including follow-up on the disposition of all positive mammograms and correlation of pathology results with the interpreting physician's mammography report. Analysis of these outcome data shall be made individually and collectively for all interpreting physicians at the facility. In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate follow-up on surgical and/or pathology

results and review of the mammograms taken prior to the diagnosis of a malignancy.

(2) Frequency of audit analysis. The facility's first audit analysis shall be initiated no later than 12 months after the date the facility becomes certified or 12 months after April 28, 1999, whichever date is the latest. This audit analysis shall be complete within an additional 12 months to permit completion of diagnostic procedures and data collection. Subsequent audit analyses will be conducted at least once every 12 months. These shall be maintained in accordance with subsection (ff) of this section.

(3) Reviewing interpreting physician. Each lead interpreting physician or an interpreting physician designated by the lead interpreting physician shall review the medical outcomes audit data at least once every 12 months. This individual shall analyze the results of the audit and shall be responsible for the following:

(A) recording the dates of the audit period(s);

(B) documenting the results;

(C) notifying other interpreting physicians of their results and the registrant's aggregate results; and

(D) documenting any follow up actions and the nature of the follow up.

(x) Mammographic procedure and techniques for mammography of patients with breast implants. Each registrant shall have a procedure to inquire whether or not the patient has breast implants prior to the mammographic exam. Except where contraindicated, or unless modified by a physician's directions, patients with breast implants shall have mammographic views to maximize the visualization of breast tissue.

(y) Complaints. Each accredited facility shall do the following:

(1) establish a written procedure for collecting and resolving consumer complaints;

(2) maintain a record of each serious complaint received by the facility in accordance with subsection (ff) of this section; and

(3) report unresolved serious complaints to the facility's FDA-approved accreditation body within 30 days of receiving the complaint.

(z) Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(aa) Additional mammography review, targeted clinical reviews, and patient notification.

(1) If the agency certifying body believes that mammography quality at a facility may have been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency certifying body, for review by the FDA-approved accreditation body.

(2) If the agency certifying body determines that mammography quality at a facility has been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency certifying body, for review by the FDA-approved accreditation body. The agency certifying body may require such facility to notify patients who received mammograms, and their referring physicians. The notification shall include the deficiencies presenting such risk, the potential consequences to the patient, appropriate remedial measures, and such other relevant information as the agency certifying body may require. Such notification

tion shall occur within a time frame and in a manner specified by the agency.

(3) The agency certifying body, the agency accreditation body or another FDA-approved accreditation body, or the FDA may request a targeted clinical image review due to, but not limited to, serious complaints or severe items of non-compliance.

(bb) Requirements for machines used exclusively for interventional breast radiography. Machines used exclusively for interventional breast radiography, including mobile service operations, are not included in the definition of mammography systems. These machines are not required to be accredited or to receive certification by the agency certifying body in accordance with 21 CFR, Part 900.11. However, each facility using such machines shall apply for and receive a certification from the agency. The facility shall comply with the following:

(1) purpose and scope in accordance with subsections (a) and (b) of this section;

(2) applicable definitions in subsection (c) of this section;

(3) prohibitions in accordance with subsection (d)(2) and (3) of this section;

(4) exemptions in accordance with subsection (e)(2), (3), and (5) of this section;

(5) certification requirements in accordance with subsection (f)(2) - (4) and (5)(B) of this section and the requirement to submit a medical physicist's survey in accordance with paragraph (13) of this subsection;

(6) issuance of certification and specific terms and conditions of certification in accordance with subsections (g)(1) and (1)(B), (2), (3), and (m) of this section;

(7) responsibilities of a registrant in accordance with subsection (n)(1), (2)(A), (D) and (E), and (4) - (6) of this section;

(8) expiration, termination, modification and revocation of certification in accordance with subsections (l), (p), and (q) of this section;

(9) renewal of certification as follows:

(A) the registrant shall file an application for renewal of certification in accordance with subsection (f)(2) - (4) and (5)(B) of this section and submit a medical physicist's survey in accordance with paragraph (13) of this subsection; and

(B) if a registrant files an application in proper form at least 30 days before the existing certification expires, such existing certification shall not expire until the application status has been determined by the agency certifying body;

(10) personnel requirements for a general certificate, medical radiologic technologist in accordance with the Medical Radiologic Technologist Certification Act, Texas Occupational Code, Chapter 601;

(11) personnel requirements for medical physicists in accordance with subsection (r)(3) of this section;

(12) requirement to have a written quality assurance program to ensure the safety, reliability, clarity, and accuracy of services performed at the facility, including corrective actions to be taken if images are of poor quality;

(13) requirement to have a medical physicist perform an annual survey of AEC, kVp, focal spot condition, HVL, and dosimetry tests in accordance with subsection (v)(5)(A) - (F) of this section. The medical physicist shall provide a preliminary oral or written report of

deficiencies within 72 hours of the survey if it involves dosimetry. The medical physicist shall prepare a written report for the facility within 30 days of the date of the survey to include the following:

(A) a summary of the tests in the annual survey with recommendations for corrective actions; and

(B) date and signature of the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey;

(14) the requirement to correct deficiencies indicated in the test results for dosimetry in accordance with subsection (v)(9)(B)(ii)(IV) of this section before any further examinations are performed;

(15) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(16) occupational dose limits and personnel monitoring in accordance with §289.231 of this title;

(17) provision of a technique chart in accordance with subsection (ee)(2) of this section;

(18) the requirement to maintain receipt, transfer, disposal, calibration, and maintenance records in accordance with subsection (ee)(3) and (8) of this section;

(19) requirement to have a viewing system in accordance with subsection (ee)(4) of this section;

(20) requirement to prevent exposure of individuals other than the patient in accordance with subsection (ee)(5) of this section;

(21) maintenance of applicable records in subsection (ff) of this section;

(22) inspection requirements in accordance with subsection (gg) of this section, except for subsection (gg)(1) of this section; and

(23) equipment requirements in accordance with §289.227(h) of this title (relating to Use of Radiation Machines in the Healing Arts).

(cc) Self-referral mammography. Any person proposing to conduct a self-referral mammography program shall not initiate such a program without prior approval of the agency. When requesting such approval, that person shall submit the following information:

(1) the number and type of views (or projections);

(2) the age of the population to be examined and the frequency of the exam following established, nationally recognized criteria, such as those of the American Cancer Society, American College of Radiology (ACR), or the National Council on Radiation Protection and Measurements;

(3) written procedures to include methods of:

(A) advising patients and private physicians of the results of the mammography examination in accordance with subsection (t)(2) of this section;

(B) follow-up with patients and physicians in accordance with subsection (t)(3) of this section; and

(C) recommending to patients who do not have a physician means of selecting a physician; and



(4) methods for educating mammography patients in breast self-examination techniques and on the necessity for follow-up by a physician.

(dd) Medical research and investigational devices.

(1) Any research using radiation producing devices on humans must be approved by an IRB as required by Title 45, CFR, Part 46 and Title 21, CFR, Part 56. The IRB must include at least one licensed physician to direct any use of radiation in accordance with §289.231(b) of this title.

(2) Facilities with mammography machines with investigational device exemptions that are involved in clinical studies must comply with primary regulations that govern the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include the following:

(A) 21 Code of Federal Regulations (CFR), Part 812, Investigational Device Exemptions;

(B) 21 CFR, Part 50, Protection of Human Subjects;

(C) 21 CFR, Part 56, Institutional Review Boards;

(D) 21 CFR, Part 54, Financial Disclosure by Clinical Investigators; and

(E) 21 CFR, Part 821, Subpart C, Design Controls of the Quality System Regulation.

(ee) Other operating procedures.

(1) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular system. These procedures shall include, but are not limited to, the items in subsection (hh)(3) of this section.

(2) Technique chart. A chart or manual shall be provided or electronically displayed in the vicinity of the control panel of each machine that specifies technique factors to be utilized versus patient's anatomical size. The technique chart shall be used by all operators.

(3) Receipt, transfer, and disposal of mammography machines. Each registrant shall maintain records showing the receipt, transfer, and disposal of mammographic machines. These records shall include the date of receipt, transfer, or disposal; the name and signature of the individual making the record; and the manufacturer's model and serial number from the control panel of the mammographic machine. Records shall be maintained in accordance with subsection (ff) of this section for inspection by the agency.

(4) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system shall be provided to permit the operator to continuously observe the patient during irradiation. The operator shall be able to maintain verbal, visual, and aural contact with the patient.

(5) Exposure of individuals other than the patient. Only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiation exposure unless such individual's assistance is required.

(6) Protective devices. Protective devices shall be utilized when required, as in paragraph (7) of this subsection.

(A) Protective devices shall be of no less than 0.25 mm lead equivalent material.

(B) Protective devices, including aprons, gloves, and shields shall be checked annually for defects such as holes, cracks, and tears. These checks may be performed by the registrant by visual or tactile means, or x-ray imaging. If a defect is found, protective devices shall be replaced or removed from service until repaired. A record of this test shall be made and maintained by the registrant in accordance with subsection (ff) of this section for inspection by the agency.

(7) Holding of patient or image receptor.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits.

(B) If a patient or image receptor must be held by an individual during an exposure, that individual shall be protected with appropriate shielding devices described in paragraph (6) of this subsection.

(C) The registrant's written operating and safety procedures required by paragraph (1) of this subsection shall include the following:

(i) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(ii) a procedure used for selecting an individual to hold or support the patient or image receptor.

(D) In those cases where the patient must hold the image receptor, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.25 mm lead equivalent material.

(8) Calibration, maintenance, and modifications. Each registrant shall maintain records showing calibrations, maintenance, and modifications performed on each mammographic machine. These records shall include the date of the calibration, maintenance, or modification performed; the name of the individual making the record; and the manufacturer's model and serial number of the control panel of the mammographic machine. These records shall be maintained in accordance with subsection (ff) of this section.

(ff) Record requirements. Records required by this section shall be maintained for inspection by the agency in accordance with paragraph (3) of this subsection. Records may be maintained electronically in accordance with §289.231(ff)(3) of this title.

(1) Records for mammography machines authorized for mobile service operations.

(A) Copies of the following shall be kept with mammography machines authorized for mobile services:

(i) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(ii) medical radiologic technologists' credentials;

(iii) current quality control records for at least the last 90 calendar days for on-board processors in accordance with subsection (v)(1) of this section;

(iv) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;

(v) copy of certification;

(vi) certification of inspection in accordance with subsection (gg)(5) of this section;

(vii) notice of failure from last inspection in accordance with subsection (gg)(6), if applicable; and

(viii) copy of mammography accreditation.

(B) Copies of all other records required by this section shall be maintained at a specified location.

(2) Records required at separate authorized use locations. Copies of the following shall be kept at each separate authorized use location:

(A) credentials for interpreting physicians operating at that location in accordance with subsection (r)(1) of this section;

(B) credentials for medical radiologic technologists operating at that location in accordance with subsection (r)(2) of this section;

(C) credentials for medical physicists operating at that location in accordance with subsection (r)(3) of this section;

(D) continuing education and experience records for interpreting physicians, medical radiologic technologists, and medical physicists operating at that location in accordance with subsection (r)(1)(C), (2)(C), and (3)(C) of this section;

(E) mandatory training records for interpreting physicians, medical radiologic technologists, and medical physicists operating at that location in accordance with subsection (r)(1)(E), (2)(E), and (3)(E) of this section, if applicable;

(F) current physicist annual survey of the mammography system;

(G) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;

(H) copy of certification;

(I) quality assurance program in accordance with subsections (u), (v), and (w) of this section;

(J) quality control records in accordance with subsection (u)(2) of this section;

(K) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(L) records of receipts, transfers, and disposal in accordance with subsection (ee)(3) of this section;

(M) calibration, maintenance, and modification records in accordance with subsection (ee)(8) of this section;

(N) certification of inspection in accordance with subsection (gg)(5) of this section;

(O) notification of failure in accordance with subsection (gg)(6), if applicable;

(P) records of notification of patients in accordance with subsection (gg)(10) this section; and

(Q) copy of mammography accreditation.

(3) Time requirements for record keeping. Time requirements for record keeping shall be according to the following chart. Figure: 25 TAC §289.230(ff)(3)

(gg) Inspections. In addition to the requirements of §289.231(kk) of this title, the following applies to inspections of mammography systems.

(1) The agency may inspect each mammography system that receives a certification in accordance with this chapter not later than the 60th day after the date the certification is issued.

(2) The agency may inspect, at least once annually, each mammography system that receives a certification.

(3) To protect the public health, the agency may conduct more frequent inspections than required by this subsection.

(4) The agency may make reasonable attempts to coordinate inspections in this section with other inspections required in accordance with this chapter for the facility where the mammography system is used.

(5) After each satisfactory inspection, the agency shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection shall be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection may include the following:

(A) specific identification of the mammography system inspected;

(B) the name and address of the facility where the mammography system was used at the time of the inspection; and

(C) the date of the inspection.

(6) Any severity level I violation involving a mammography system, found by the agency, in accordance with §289.205 of this title, constitutes grounds for posting notice of failure of the mammography system to satisfy agency requirements.

(A) Notification of such failure shall be posted:

(i) on the mammography machine at a conspicuous place if the violation is machine-related; or

(ii) near the place where the mammography system practices if the violation is personnel-related; and

(iii) in a sufficient number of places to permit the patient to observe the notice.

(B) The notice of failure shall remain posted until the facility is authorized to remove it by the agency. A facility may post documentation of corrections of the violations submitted to the agency along with the notice of failure until approval to remove the notice of failure is received from the agency.

(7) Facilities that receive a severity level I violation shall notify patients on whom the facility performed a mammogram during the 30 days preceding the date of the inspection that revealed the failure. The facility shall:

(A) inform the patient that the mammography system failed to satisfy the agency certifying body's standards;

(B) recommend that the patient have another mammogram performed at a facility with a certified mammography system; and

(C) list the three facilities closest to the original testing facility that have a certified mammography system.

(8) In addition to the requirements of paragraph (7) of this subsection, the agency may require a facility to notify a patient of any other failure of the facility's mammography system to meet the agency's certification standards.

(9) The patient notification shall include the following:

(A) an explanation of the mammography system failure to the patient; and

(B) the potential consequences to the mammography patient.

(10) The registrant shall make a record of the mammography patients notified in accordance with paragraphs (7) and (8) of this subsection for inspection by the agency. The records shall include the name and address of each mammography patient notified, date of notification, and a copy of the text sent to the individual. The records shall be maintained in accordance with subsection (ff) of this section.

(hh) Appendices.

(1) Subjects to be included in mammography training for medical radiologic technologists shall include, but not be limited to, the following:

(A) breast anatomy and physiology;

(B) positioning and compression;

(C) quality assurance/quality control techniques;

(D) imaging of patients with breast implants; and

(E) at least eight hours of training in each mammography modality to be used by the technologist in performing mammography exams.

(2) Subjects to be included in mammography training for interpreting physicians shall include, but not be limited to, the following:

(A) radiation physics, including radiation physics specific to mammography;

(B) radiation effects;

(C) radiation protection; and

(D) interpretation of mammograms. This shall be under the direct supervision of a physician who meets the requirements of subsection (r)(1) of this section.

(3) Operating and safety procedures. The registrant's operating and safety procedures shall include, but are not limited to, the following procedures as applicable:

(A) posting notices to workers in accordance with §289.203(b) of this title;

(B) instructions to workers in accordance with §289.203(c) of this title;

(C) notifications and reports to individuals in accordance with §289.203(d) of this title;

(D) ordering x-ray exams in accordance with §289.231(b) of this title;

(E) occupational dose requirements in accordance with §289.231(m) of this title;

(F) personnel monitoring requirements in accordance with §289.231(n) and (q) of this title;

(G) posting of a radiation area in accordance with §289.231(x) and (y) of this title;

(H) credentialing requirements for lead interpreting physicians, interpreting physicians, medical radiologic technologists, and medical physicists in accordance with subsection (r) of this section;

(I) retention of clinical images in accordance with subsection (t)(4) of this section;

(J) quality assurance program in accordance with subsections (u) - (w) of this section;

(K) image quality and corrective action for images of poor quality in accordance with subsection (u)(1)(B)(i) of this section;

(L) repeat analysis in accordance with subsection (v)(3)(B) of this section;

(M) procedures and techniques for mammography patients with breast implants in accordance with subsection (x) of this section;

(N) procedure to handle complaints in accordance with subsection (y) of this section;

(O) self-referral mammography in accordance with subsection (cc) of this section;

(P) use of a technique chart in accordance with subsection (ee)(2) of this section;

(Q) exposure of individuals other than the patient in accordance with subsection (ee)(5) of this section;

(R) use of protective devices in accordance with subsection (ee)(6) of this section; and

(S) holding of patients or image receptors in accordance with subsection (ee)(7) of this section.

(4) Phantom image scoring protocol for film-screen modality. Each of the following object groups are to be scored separately. In order to receive a passing score on the phantom image, all three test object groups must pass. A failure in any one of the areas results in a phantom failure.

(A) Fibers. A score of 4.0 for fibers is required to meet the evaluation criteria. The diameter size of fibers are 1.56 mm, 1.12 mm, 0.89 mm, 0.75 mm, 0.54 mm, and 0.40 mm. Score the fibers as follows.

(i) Begin with the largest fiber and move down in size, adding one point for each full fiber until a score of zero or one half is given. Stop counting at the first point where you lose visibility of objects.

(ii) If the entire length of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one.

(iii) If at least half, but not all, of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one half.

(iv) If less than one half of a fiber can be seen or if the location or orientation are incorrect, that fiber receives a score of zero.

(v) After determining the last fiber to be counted, look at the overall background for artifacts. If there are background objects that are fiber-like in appearance and are of equal or greater brightness than the last visible half or full fiber counted, subtract the last half or full fiber scored.

(B) Speck groups. A score of 3.0 for speck groups is required to meet the evaluation criteria. Diameter sizes of speck groups are 0.54 mm, 0.40 mm, 0.32 mm, 0.24 mm, and 0.16 mm. There are six specks per group. Score the speck groups as follows.

(i) Begin with the largest speck group and move down in size adding one point for each full speck group until a score of one half or zero is given, then stop.

(ii) If at least four of the specks in any group are visualized, the speck group is scored as one.

(iii) If two or three specks in a group are visualized, the score for the group is one half.

(iv) If one speck or no specks from a group are visualized, the score is zero.

(v) After determining the last speck group to receive a full or one-half point, look at the overall background for artifacts. If there are speck-like artifacts within the insert region of the phantom that are of equal or greater brightness than individual specks counted in the last visible half or full speck group counted, subtract the artifact speck from the observed specks in the last group scored, one by one. Note that the highest number of speck-like artifacts that can potentially be subtracted is the number of visible specks that were scored in the last group. Repeat the scoring of the last visible speck group after these deductions.

(C) Masses. A score of 3.0 is required to meet the evaluation criteria. Diameter sizes of masses are 2.00 mm, 1.00 mm, 0.75 mm, 0.50 mm, and 0.25 mm. Score the masses as follows.

(i) Begin with the largest mass and add one point for each full mass observed until a score of one half or zero is assigned.

(ii) Score one for each mass that appears as a minus density object in the correct location that can be seen clearly enough to observe round, circumscribed borders.

(iii) Score one half if the mass is clearly present in the correct location, but the borders are not visualized as circular.

(iv) After determining the last full or half mass to be counted, look at the overall background for artifacts. If there are background objects that are mass-like in appearance and are of equal or greater visibility than the last visible mass, subtract the last full or half point assigned from the original score.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2006.

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Department of State Health Services

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## SUBCHAPTER E. REGISTRATION REGULATIONS

### 25 TAC §289.234

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §289.234, concerning mammography accreditation. Section 289.234 is adopted

with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5035).

## BACKGROUND AND PURPOSE

Section 289.230 concerning certification of mammography systems and accreditation of mammography facilities is being repealed and divided into two new rules, one concerning certification and the other concerning accreditation. The repeal and new rules are the result of the agency applying to the United States Food and Drug Administration (FDA) to become a certifying body for mammography facilities. The FDA recommended that the current rules be separated into certification and accreditation rules for clarification, as all mammography facilities in the state must have certification with the agency, while accreditation may be with the agency or with the American College of Radiology. The accreditation requirements will be incorporated into adopted new §289.234, "Mammography Accreditation." Certification requirements will be located in §289.230, "Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography" that is addressed in a separate preamble.

## SECTION-BY-SECTION SUMMARY

In adopted new §289.234, subsections (a) and (b) are revised to clarify that the section provides requirements for the accreditation of both mammography facilities and machines. The new section adds definitions for agency accreditation body and agency certifying body to define terms used in this section. Definitions for accreditation and targeted clinical image review are revised to be consistent with the FDA's Mammography Quality Standards Act (MQSA) rules. The section contains requirements for facilities that choose to be accredited with the agency including denials, suspensions and revocations, and appeals. Subsection (k)(3) is revised to clarify that a facility that applies for renewal prior to the time the existing accreditation expires, may continue to perform mammography until the review process is complete and the accreditation has been determined by the agency accreditation body.

## COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was GE Healthcare Technologies. The commenter was neither for nor against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §289.234(a), the commenter recommends consistency regarding an entity that is accredited. The commenter indicates that subsection (a) states, "This section provides for the accreditation of mammography facilities," but subsection (c)(1) begins, "Accreditation--An approval of a mammography machine..." and is immediately followed by the statement, "A facility may be accredited." The commenter recommends that the department decide on whether it is the facility or the machine that is accredited and apply the concept consistently.

Response: The commission disagrees with the comment. Individual machines receive accreditation; however, if a facility with two machines has only one that is accredited, the FDA considers the facility to be "accredited." For clarification, the department has added the words "machines and" before the word "facilities"

in the first sentence. No other change was made as a result of the comment.

Comment: Concerning §289.234(c)(18)(B) and (C), the commenter states that the concept of "latent image" is very closely associated with film and leads one to infer a limitation of these rules to screen-film mammography. The commenter suggests rewriting the definitions.

Response: The commission disagrees with the comment. The definition originated in the state statute and it is understood that this applies to digital machines as well as screen-film. No change was made as a result of the comment.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes.

Change: Concerning §289.234(b), the department has added the words "machines and" before the word "facilities" in the first sentence for clarification on accreditation of machines and facilities to be consistent with §289.234(a).

Change: Concerning §289.234(k)(3), the department revised this paragraph by deleting §289.234(k)(3)(A), and deleting the statement "if the facility receives written authorization from the agency accreditation body," to clarify that a facility applying for renewal prior to the time the existing accreditation expires, may continue to perform mammography until the review process is complete and the accreditation status has been determined by the agency accreditation body.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

#### §289.234. Mammography Accreditation.

(a) Purpose. This section provides for the accreditation of mammography machines and facilities. The use of all mammography machines accredited in accordance with this section shall be by or under the supervision of a physician licensed by the Texas Medical Board.

(b) Scope. In addition to the requirements of this section, all mammography machines and facilities are subject to the requirements of §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). This section does not apply to an entity under the jurisdiction of the federal government.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation--An approval of a mammography machine within a mammography facility by an accreditation body. A facility may be accredited by the agency accreditation body or another United States Food and Drug Administration (FDA)-approved accreditation body.

(2) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(3) Additional mammography review--At the request of the FDA or an accreditation body, a review by the accreditation body of clinical images and other relevant facility information necessary to assess conformance with the accreditation standards. The reviews include the following:

(A) additional mammography review with interpretation; or

(B) additional mammography review without interpretation.

(4) Adverse event--An undesirable experience associated with mammography activities within the scope of this section. Adverse events include but are not limited to:

(A) poor image quality;

(B) failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(C) use of personnel who do not meet the applicable requirements of §289.230(r) of this title.

(5) Agency accreditation body--For the purpose of this section, the agency as approved by the FDA under Title 21, Code of Federal Regulations (CFR), Part 900.3(d), to accredit mammography facilities in the State of Texas.

(6) Agency certifying body--For the purpose of this section, the agency, as approved by FDA, under Title 21, CFR, Part 900.21, that certifies facilities within the State of Texas to perform mammography services.

(7) Certification--An authorization for the use of a mammography system or the certification of mammography machines used for interventional breast radiography.

(8) Clinical image--See the definition for mammogram.

(9) Consumer--An individual who chooses to comment or complain in reference to a mammography examination. The individual may be the patient or a representative of the patient, such as a family member or referring physician.

(10) Facility--A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including the following:

(A) the operation of equipment to produce a mammogram;

(B) processing of film;

(C) initial interpretation of the mammogram; or

(D) maintaining the viewing conditions for that interpretation.

(11) FDA-approved accreditation body--An entity approved by the FDA under Title 21, CFR, Part 900.3(d), to accredit mammography facilities.

(12) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(13) Image review board--A group of qualified review physicians and other individuals who review the clinical and phantom images and whose qualifications have been established by the accreditation body and the accreditation body's qualifications have been approved by the FDA.

(14) Interpreting physician--A licensed physician who interprets mammographic images and who meets the requirements of §289.230(r)(1) of this title.

(15) Mammogram--A radiographic image produced through mammography.

(16) Mammography--The use of x-radiation to produce an image of the breast that may be used to detect the presence of pathological conditions of the breast. For the purposes of this section, mammography does not include radiography of the breast performed as follows:

(A) during invasive interventions for localization or biopsy procedures except as specified in §289.230(z) of this title; or

(B) with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations.

(17) Mammography machine(s)--A unit consisting of components assembled for the production of x-rays for use during mammography. These include, at a minimum, the following:

(A) an x-ray generator;

(B) an x-ray control;

(C) a tube housing assembly;

(D) a beam limiting device; and

(E) supporting structures.

(18) Mammography system--A system that includes the following:

(A) an x-ray machine used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging-processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiologic technologist who performs mammography; and

(F) a physician who engages in, and who meets the requirements of this section relating to the reading, evaluation, and interpretation of mammograms.

(19) Medical physicist--An individual who performs surveys and evaluations of mammographic equipment and facility quality

assurance programs in accordance with this section and who meets the qualifications in §289.230(r)(3) of this title.

(20) Medical radiologic technologist (operator of equipment)--An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations, who performs mammography examinations in accordance with this section and who meets the qualifications in §289.230(r)(2) of this title.

(21) Patient--Any individual who undergoes a mammography examination in a facility, regardless of whether the person is referred by a physician or is self-referred.

(22) Phantom--A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(23) Phantom image--A radiographic image of a phantom.

(24) Radiation machine--For the purposes of this part, radiation machine also means mammography machine.

(25) Reinstatement fee--The fee in accordance with §289.204(h) of this title charged to reinstate an application for a mammography machine that has been denied accreditation or whose application has been abandoned in accordance with subsection (h)(3) of this section.

(26) Review physician--An individual who is qualified to review clinical images on behalf of the accreditation body. To be qualified, this individual shall comply with the following:

(A) meet the interpreting physician requirements of §289.230(r)(1) of this title;

(B) be trained and evaluated in the clinical image review process for the types of clinical images to be evaluated by a review physician by the accreditation body before designation as a review physician and periodically thereafter; and

(C) clearly document findings and reasons for assigning a particular score to any clinical image and provide information to the facility for use in improving the attributes for which significant deficiencies were identified.

(27) Serious adverse event--An adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(28) Serious complaint--A report of a serious adverse event.

(29) Survey--An on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(30) Targeted clinical image review--A review of a minimum of two sets of "negative" clinical images from a specific date, or date range, at the request of the agency.

(d) Accreditation of mammography facilities.

(1) All mammography facilities shall be accredited by an FDA-approved accreditation body and shall meet the quality standards in §289.230(r) - (aa) of this title. In order to qualify for certification in accordance with §289.230 of this title, new facilities applying to the agency accreditation body shall receive acceptance of the accreditation application.

(2) The facility shall submit the following information in addition to the information required in subsection §289.230(f) of this title:

(A) an application for accreditation on forms and in accordance with accompanying instructions prescribed by the agency accreditation body;

(B) the appropriate accreditation fee prescribed in §289.204 of this title; and

(C) evidence that the medical physicist's survey and mammography equipment evaluation in accordance with §289.230(v)(10) and (11) of this title was performed within the following time frames:

(i) no more than six months before the date of the accreditation application for new facilities seeking accreditation;

(ii) no more than 14 months before the date of the application for accreditation for facilities changing accreditation to one issued by the agency accreditation body; or

(iii) no more than 14 months before the date of the application for renewal of accreditation for facilities accredited by the agency accreditation body.

(3) Upon notification by the agency accreditation body, each applicant shall submit clinical and phantom images directly to the image review board.

(e) Issuance of accreditation of a mammography facility. An accreditation document will be issued when the mammography facility meets the requirements of subsection (d) of this section and §289.204 of this title and becomes accredited by the agency accreditation body. In order for an accreditation to be issued, the agency accreditation body must receive acceptable dose evaluation information from the dosimetry processor and be notified by the image review board that the applicant met the criteria for clinical images and phantom images, and dose evaluation.

(f) Denial or abandonment of an application for accreditation of mammography facilities.

(1) Any application for accreditation may be denied by the agency accreditation body when the applicant fails to meet established criteria for accreditation in accordance with subsection (d) of this section.

(2) Before the agency accreditation body denies an application for accreditation, the agency shall give notice of the denial, the facts warranting the denial, and shall afford the applicant an opportunity for a hearing in accordance with §289.205(h) of this title. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of date of receipt of the notice, the agency may proceed to deny. The applicant shall have the burden of proof showing cause why the application should not be denied.

(3) Action on an accreditation application will be abandoned due to lack of response by the applicant to a request for information by the agency accreditation body. Abandonment of such actions does not provide an opportunity for a hearing; however, the applicant retains the right to resubmit the application and pay a reinstatement fee at any time.

(g) Suspension and revocation of accreditation of mammography facilities.

(1) Suspension of accreditation of mammography facilities.

(A) An accreditation of a mammography facility may be suspended or revoked for any of the following reasons:

(i) any material false statement in the application or any statement of fact required under provision of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency accreditation body to refuse to grant an accreditation of mammography facility on an original application; or

(iii) failure to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(B) Before the agency accreditation body suspends or revokes an accreditation of a mammography facility, the agency accreditation body shall give notice by personal service or by certified mail, addressed to the last known address, of the facts or conduct alleged to warrant the suspension or revocation by complaint, and order the accredited mammography facility to show cause why the mammography facility accreditation should not be suspended or revoked. The accredited mammography facility shall be given an opportunity to request a hearing on the matter no later than 30 days after receipt of the notice.

(C) Any accredited mammography facility against whom the agency accreditation body contemplates an action described in subparagraph (A) of this paragraph may request a hearing by writing the director within 30 days of receipt of the notice.

(i) The written request for a hearing must contain the following:

(I) a statement requesting a hearing; and

(II) the name, address, and identification number of the accredited mammography facility against whom the action is being taken.

(ii) Failure to submit a written request for a hearing within 30 days will render the agency accreditation body action final.

(D) If the agency accreditation body suspends the accreditation of a mammography facility in accordance with subparagraph (A) of this paragraph, the suspension shall remain in effect until the agency accreditation body determines the following:

(i) that allegations of violations or misconduct were not substantiated;

(ii) that violations of required standards have been corrected to the agency accreditation body's satisfaction; or

(iii) the facility's accreditation is revoked in accordance with §289.205 of this title.

(2) Revocation of accreditation of mammography facilities shall be in accordance with §289.205(g) of this title.

(h) Appeal of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(1) The appeal process described in this subsection is available only for adverse accreditation or reaccreditation decisions that preclude certification by the agency certifying body. Agency certifying body decisions to suspend or revoke certificates that are already in effect will be handled in accordance with §289.230(h) of this title.

(2) A facility that has been denied accreditation or reaccreditation is entitled to an appeals process from the agency accreditation body, in accordance with §289.205 of this title. A facility must avail itself of the accreditation body's appeal process before requesting reconsideration from the agency certifying body.

(3) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeal process is entitled to further appeal to the FDA.

(4) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

(i) Specific terms and conditions of accreditation of mammography facilities.

(1) Each accreditation document issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable requirements and orders of the agency accreditation body.

(2) No accreditation document issued by the agency accreditation body under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person.

(j) Responsibilities of an accredited facility. A facility shall notify the agency accreditation body of any changes that would render the information contained in the application inaccurate.

(k) Expiration and renewal of accreditation of mammography facilities.

(1) The accreditation expires at the end of the day in the month and year stated on the accreditation document.

(2) An application for renewal of accreditation with the agency accreditation body shall be filed in accordance with subsection (d) of this section and with fees in accordance with §289.204 of this title.

(3) A mammography facility filing an application for renewal in accordance with subsection (d) of this section and with fees in accordance with §289.204 of this title before the existing accreditation expires, may continue to perform mammography until the review process is complete and the accreditation status has been determined by the agency accreditation body.

(4) Accreditation for a mammographic facility is valid for three years from the date of issuance, unless accreditation of the facility is suspended or revoked prior to such deadline.

(5) Issuance of renewal of accreditation shall be in accordance with subsection (e) of this section.

(l) Complaints. Each facility accredited by the agency accreditation body shall do the following:

(1) establish a written procedure for collecting and resolving consumer complaints;

(2) maintain a record of each serious complaint received by the facility in accordance with §289.230(ff)(3) of this title; and

(3) report unresolved serious complaints to the accreditation body within 30 days of receiving the complaint.

(m) Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(n) Additional mammography review and patient notification. If the agency certifying body or the agency accreditation body believes that mammography quality at a facility may have been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency certifying body or the agency accreditation body for review by the accreditation body.

(o) Record requirements. Records required by this section shall be maintained for inspection by the agency in accordance with subsection §289.230(ff)(3) of this title. Records may be maintained electronically in accordance with §289.231(ff)(3) of this title.

(p) On-site facility visit, targeted clinical image review, and random clinical image review.

(1) Each accredited facility shall afford the agency accreditation body, at all reasonable times, opportunity to audit the facility where mammography equipment or associated equipment is used or stored.

(2) Each accredited facility shall make available to the agency accreditation body for inspection, upon reasonable notice, records maintained in accordance with this chapter.

(3) Each accredited facility shall, upon request by the agency accreditation body or the agency certifying body, make clinical images available to the image review board for a targeted clinical image review or a random clinical image review. The agency certifying body, the agency accreditation body, another FDA-approved accreditation body, or the FDA may request a targeted clinical image review due to, but not limited to, serious complaints or severe items of non-compliance.

(4) Annually, the agency accreditation body shall conduct on-site visits and random clinical image reviews of a sample of facilities to monitor and assess their compliance with standards established by the accreditation body. Other on-site visits may be conducted based on problems identified through inspections, serious complaints received from consumers or others, a previous history of noncompliance, or any other information in the possession of the accreditation body, inspectors, or FDA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2006.

TRD-200606056

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 1, 2007

Proposal publication date: June 23, 2006

For further information, please call: (512) 458-7111 x6972



## **TITLE 43. TRANSPORTATION**

### **PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY**

#### **CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY**

##### **43 TAC §57.56**

The Automobile Theft Prevention Authority (ATPA) adopts an amendment to §57.56, relating to the ATPA, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4414). The text of the rule as amended will not be republished. The amendment changes the date that the board's advisory committees will be abolished. The Government Code, §2110.008, requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law. The amendment to §57.56 changes the date



to August 31, 2010. Adoption of this amendment will act as the Authority's approval of the continuation of these committees.

No written comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code, §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them. The following are the statutes, articles, or codes affected by the amendments: §57.56 - Article 4413(37), §6(a); Government Code, §2110.008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2006.

TRD-200606019

Susan Sampson

Director

Automobile Theft Prevention Authority

Effective date: November 20, 2006

Proposal publication date: May 26, 2006

For further information, please call: (512) 374-5101

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.230(c)(51)

$$OD = \log_{10} \frac{I_o}{I_t}$$

where  $I_o$  = light intensity incident on the film and  
 $I_t$  = light transmitted through the film.

Figure: 25 TAC §289.230(v)(5)(D)

**TABLE I**  
X-ray Tube Voltage (kilovolt peak) and Minimum HVL

Designed Operating Range (kV)	Measured Operating Voltage (kV)	Minimum HVL (mm of aluminum)
Below 50	20	0.20
	25	0.25
	30	0.30

Figure: 25 TAC §289.230(ff)(3)

Specific Subsection	Name of Record	Time Interval for Record Keeping
(r)(1)(A)	Interpreting Physician Qualifications	Until termination of certification or 2 years after physician leaves facility
(r)(1)(C)	Interpreting Physician Continuing Education and Experience	6 years
(r)(1)(E)	Mandatory training for Interpreting Physician, if applicable	6 years
(r)(2)(A)	Medical Radiologic Technologist Qualifications	Until termination of certification or 2 years after technologist leaves facility
(r)(2)(C)	Medical Radiologic Technologist Continuing Education and Experience	6 years
(r)(2)(E)	Mandatory training for Medical Radiologic Technologist, if applicable	6 years
(r)(3)(A)	Medical Physicist Qualifications	Until termination of certification or 2 years after physicist is no longer associated with the facility
(r)(3)(C)	Medical Physicist Continuing Education and Experience	6 years
(r)(3)(E)	Mandatory training for Medical Physicist, if applicable	6 years
(s)(14)	FDA Variances	Until termination of certification or equipment is replaced
(u)(2)	Quality Assurance (QA) Records	Until the next annual inspection has been completed and the agency has determined that the facility is in compliance with the QA requirements or until the test has been performed two additional times at the required frequency, whichever is longer.
(v)(10)	Physicist Mammography Survey	7 years
(v)(11)	Physicist Mammography Equipment Evaluation	2 years
(w)(2)	Medical Outcomes Audit	2 years
§289.234(o)(2)	Complaints	3 years

Specific Subsection	Name of Record	Time Interval for Record Keeping
(ee)(1)	Operating & Safety Procedures	Until termination of certification
(ee)(4)	Records of Receipt, Transfer, and Disposal	Until termination of certification
(ee)(6)	Protective Devices Annual Check	3 years
(ee)(7)	Records on Calibration, Maintenance and Modifications Performed on Mammography Machines	2 years
(ff)(2)(I)	Current §§289.203, 289.204, 289.205, 289.226, 289.227, 289.230, 289.231, 289.234	Until termination of certification
(ff)(2)(J)	Current Certification of Mammography Systems	Until termination of certification
(ff)(2)(N)	Current Accreditation of Mammography Systems	Until termination of certification
(ff)(5)	Certification of Inspection	Until termination of certification
(gg)(6)	Notice of Failure	Until termination of certification
(gg)(10)	Patient Notification	Until termination of certification

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Alcoholic Beverage Commission

Enforcing the Underage Drinking Laws Block Grant - Request for Applications

### OVERVIEW

Underage Drinking is a problem that requires continuous attention from the enforcement, prevention, and education fields. Although the State of Texas currently allocates resources to address underage drinking, more needs to be done.

Through this competitive process, applicants may request funds for a variety of projects that help to meet this goal. Funds are available to eligible organizations from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), Enforcement of Underage Drinking Laws (EUDL) block grant.

As the state administrator of the grant, the Texas Alcoholic Beverage Commission (TABC) invites organizations to apply for project funding.

### PURPOSE

To increase the State's ability to enforce the underage drinking laws and to prevent youth access to and illegal use of alcohol.

### GOALS

To fund selected alcohol age-law enforcement efforts and/or underage drinking prevention programs in Texas, especially those in small towns, rural areas, and on college and university campuses.

To increase the state's ability to effectively enforce underage drinking laws, and to prevent the availability of alcoholic beverages to minors.

### APPLICATION KIT

This request for applications contains general information only. For complete information and grant application requirements, go to: <http://www.tabc.state.tx.us/grants/EUDL.htm>.

NOTE: Applications may be denied and grants may be terminated if requirements are not met.

### APPLICATION DEADLINE

February 15, 2007, by 5:00 P.M.

### GRANT AMOUNTS

Individual awards range from \$20,000 to \$50,000 per year, available on a reimbursement basis only.

### GRANT PERIOD

June 1, 2007, through May 31, 2008.

### ELIGIBLE ORGANIZATIONS

State agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, colleges, and universities.

NOTE: Applicants may provide services directly or under contract with other cities, counties, school districts, private companies, or nonprofit organizations.

## PROGRAM NARRATIVE GUIDELINES

### Application must:

Present verifiable data to document an underage drinking problem;

Clearly detail a comprehensive approach to the problem that involves several enforcement and/or prosecution-based strategies, education, prevention, and community involvement;

Explain why additional resources are needed and how grant funds will be used to implement the approach;

Describe how the program will be coordinated with existing programs and policies;

Describe how funds will be used to create new projects or expand existing ones.

### Applicant should include detailed explanations of:

How the program will include partnerships with community coalitions;

How the program will include minors in planning and implementing program activities;

The program's use of multiple, fact-based strategies that reduce access to alcoholic beverages among underage youth in the impact area;

Planned environmental approaches, such as enforcement efforts that target identified problems, strategies to change in policy and/or public opinion, or community-based practices that discourage underage drinking;

Existing programs and policies, with particular attention to documenting how grant funds will be used to create new projects or expand existing ones.

NOTE: Preference is given to programs that outline a plan to continue efforts after grant period.

### FUNDING

Funds shall only be used to start new initiatives or expand existing programs.

Applicants may apply for continuation funding up to three years.

Funded applicants must provide a project "match" equal to at least 25 percent of total project cost. This match may be in the form of cash and/or in-kind contributions.

Funds are available on a reimbursement basis only.

Federal funds shall not be used to supplant state or local funds.

### SELECTION PROCESS

Applications are scored competitively using the scoring instrument in the application kit.

Funding decisions are within the discretion of the TABC administrator or designee.

### PERFORMANCE MEASURES AND REPORTS

Grant applications must include measurable goals with baseline data (data collected the year before the grant). Actual results for each goal

will be compared with baseline data. Grantees must submit quarterly progress and financial expenditure reports to the TABC.

NOTE: Failure to submit reports timely may result in a financial hold on grant funds until complete reports are submitted.

#### **SUBMITTING APPLICATIONS**

Only complete, hard-copy applications with authorized signatures will be accepted for consideration.

Mail original application to:

TABC

Grants

P.O. Box 13127

Austin, TX 78711

Send an electronic version for use as a file copy via e-mail to [grants@tabc.state.tx.us](mailto:grants@tabc.state.tx.us).

NOTE: Send a copy of the completed grant application to the appropriate Regional Council of Governments (COG) or to the State Single Point of Contact (SPOC) for TRACS review. Submit a copy of the TRACS review letter to TABC.

#### **AWARD ANNOUNCEMENTS**

Funding awarded April 30, 2007.

Applicants are notified of the grant award or denial with a letter signed by the TABC administrator, grant programs coordinator or designee.

#### **Grantee Training**

Grantees should plan to attend a grant delivery meeting in May 2007 at TABC Headquarters in Austin.

#### **CONTACT**

**For more information**, contact TABC Grants at (512) 206-3430 or via e-mail at [grants@tabc.state.tx.us](mailto:grants@tabc.state.tx.us).

#### **PROGRAM AUTHORIZATION**

This block grant funding is authorized under the Enforcing the Underage Drinking Laws Program, authorized by the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105-277, FY 2001 Appropriations Act, Public Law 106-553.

TRD-200606088

Lou Bright

General Counsel

Texas Alcoholic Beverage Commission

Filed: November 7, 2006

### **Ark-Tex Council of Governments**

#### **Public Notice for Brownfields Assessment Grant Application**

The Ark-Tex Council of Governments (ATCOG) is submitting Brownfields Grant Applications to the Environmental Protection Agency for funding to conduct assessment, cleanup, and redevelopment activities at Brownfield sites within the 10 county area. The Counties covered are Miller County in Arkansas, and Bowie, Cass, Delta, Hopkins, Lamar, Titus, Red River, Morris and Franklin Counties in Texas. Brownfields are identified as real property where the expansion, redevelopment, or reuse of the property may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. If funded, these grants will be used for community outreach, environmental assessment, expansion of greenspace, and cleanup/redevelop-

ment of property. This notice is to inform the region of the submission of the grant applications and to provide an opportunity for public comment prior to submitting the application on December 8, 2006. A public meeting will be held on Friday, December 1, 2006 at the ATCOG offices located at 122 Plaza West, Texarkana, Texas 75501 between 2 and 4 p.m. Draft copies of the grant applications will be available at the public meeting for review and comments. Community involvement is an important part of these types of projects and is a key factor in EPA's evaluation of these grant applications. Therefore, public and community-based organizations are encouraged to attend the public meeting and review the draft grant applications. Interested community-based organizations are also encouraged to contact Elizabeth Layman, at 903-832-8636 if your organization has a special interest in this project. Please contact or send any comments about the draft grant application to:

Elizabeth Layman

Environmental Resource Planner

ATCOG

P.O. Box 5307

Texarkana, TX 75505-5307

TRD-200606105

L. D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: November 7, 2006

### **Office of the Attorney General**

#### **Notice of Settlement of a Texas Clean Air Act Enforcement Action**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and the State of Texas v. Lone Star Land Clearing, Inc., a Texas Corporation and Charles Tunnell, Cause No. 2005-08434, in the 269th Judicial District Court of Harris County, Texas.

Background: The State, on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), joined in this suit with Harris County to enforce against multiple violations of the Texas Clean Air Act in Harris County, Texas. The violations arise from the improper operation of an Air Curtain Incinerator resulting in permit by rule and nuisance violations.

Nature of Settlement: The proposed settlement with Lone Star Land Clearing, Inc. and Charles Tunnell awards Harris County and the State of Texas \$76,220.00 in civil penalties, of which \$55,000 shall be deferred upon compliance with the injunction, and \$3,780 in attorney fees to the State of Texas.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed

to Sarah Jane Utley, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.*

TRD-200606081  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 6, 2006

### Texas Solid Waste Disposal Act and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas and The State of Texas v. Phuong Thi Ngoc Lam and d/b/a LNP and Tho Lam, Cause No. 2005-47686 in the 152nd Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant was in the wood materials recycling business in Harris County. The facility ceased recycling activities but continued to store waste at the site. Defendant was ordered to close and clean-up the site in 2003, but such clean-up stopped abruptly, leaving large amounts of wood debris and other waste on the site.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction permanently enjoins Defendant to clean-up and properly dispose of all the waste on the site. Defendant has agreed to pay Plaintiffs \$20,375.00, consisting of \$17,275.00 in civil penalties to be divided equally between Harris County and the State of Texas, and \$3,100.00 in attorney's fees, with \$1,500.00 to be paid to Harris County and \$1,600.00 to be paid to the State of Texas, plus all court costs. Part of the civil penalty shall be deferred upon the successful completion of the clean-up.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.*

TRD-200606084  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: November 6, 2006

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 27, 2006, through November 2, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 8, 2006. The public comment period for these projects will close at 5:00 p.m. on December 8, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Davis Petroleum Corporation;** Location: The project is located within State Tract 351, Corpus Christi Bay, in Nueces County, Texas. The project is called State Tract 351, Well No. 1 and can be located on the U.S.G.S. quadrangle map entitled: PORT INGLE-SIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 680,861; Northing: 3,079,855. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Approximately 3,800 cubic yards of shell, crushed rock, or washed gravel will be used as a base for the proposed drilling rig and production facility. CCC Project No.: 07-0028-F1; Type of Application: U.S.A.C.E. permit application #24357 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

**Applicant: Davis Petroleum Corporation;** Location: The project is located within State Tract 352, Corpus Christi Bay, Nueces County, Texas. The project is called State Tract 352, Well No. 1 and can be located on the U.S.G.S. quadrangle map entitled: PORT INGLE-SIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 680,504; Northing: 3,079,888. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Approximately 3,800 cubic yards of shell, crushed rock, or washed gravel will be used as a base for the proposed drilling rig and production facility. CCC Project No.: 07-0029-F1; Type of Application: U.S.A.C.E. permit application #24358 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

**Applicant: Davis Petroleum Corporation;** Location: The project is located within State Tract 351, Corpus Christi Bay, in Nueces County, Texas. The project is called State Tract 351 Well No. 2 and can be located on the U.S.G.S. quadrangle map entitled: PORT INGLESIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 680,671; Northing: 3,079,676. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Approximately 3,800 cubic yards of shell, crushed rock, or washed gravel will be used as a base for the proposed drilling rig and production facility. CCC Project No.: 07-0030-F1; Type of Application: U.S.A.C.E. permit application #24359 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

**Applicant: BOSS Exploration & Production Corporation;** Location: The project is located within State Tracts (ST) 413, 414 and 424 in North Corpus Christi Bay, approximately 2 miles southeast of Port Ingleside, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: PORT INGLESIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 679,162; Northing: 3,076,340. Project Description: The applicant proposes to install, operate and maintain three 4-inch O.D. pipelines in a common trench approximately 7,970 feet in length, necessary for oil and gas transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The trench and associated pipelines will be located between the proposed ST 414, Well No. 9 and the existing ST 425 Platform. CCC Project No.: 07-0031-F1; Type of Application: U.S.A.C.E. permit application #24361 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

**Applicant: Seabrook Land Company;** Location: The project site is located in Galveston Bay, on property owned by the applicant, along the east corner of Todville Road and 10th Street, just north of the State Highway 146 Bridge, in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 304194; Northing: 3270669. Project Description: The applicant is requesting authorization to construct a 99-unit waterfront condominium. The proposed condominium will be constructed over water and will be elevated on stilts. The applicant proposes to provide boat storage and launching facilities, fishing piers, and a swimming area beneath the structure. An elevated walkway will be constructed around the waterside perimeter of the property and riprap will be placed beneath the walkway to provide aquatic habitat. Additionally, the applicant will stabilize the existing shoreline using articulating concrete blocks. A total of 533 cubic yards of fill material will be discharged into jurisdictional areas as a result of the proposed activity. In all, 0.19 acre of waters of the United States, including wetlands (0.03 acre), will be impacted as a result of the proposed activity. CCC Project No.: 07-0036-F1; Type of Application: U.S.A.C.E. permit application #24378 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited

to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200606108

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: November 8, 2006

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of November 13, 2006 - November 19, 2006 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of November 13, 2006 - November 19, 2006 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200606087

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 7, 2006

## Texas Education Agency

### Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8, or K-8 Developed by Entities Other Than Texas School Districts

Description. The Texas Education Agency (TEA) is publishing notification that Coordinated School Health Programs may be submitted for review. The purpose of the review process is to assist school districts in meeting requirements of the Texas Education Code (TEC), §38.013 and §38.014. TEC, §38.013, requires TEA to make available to each school district one or more coordinated school health programs for elementary, middle, and junior high schools and to notify each school district of the program(s). TEC, §38.014, requires that each school district participate in the appropriate training for the implementation of a TEA-approved coordinated school health program in each elementary, middle, and junior high school in the district. Each school district is required to implement a coordinated school health program approved by TEA in each elementary, middle, and junior high school no later than the 2006-2007 school year.

Program Requirements. Any entity that elects to have a program reviewed is invited to send a complete description of the program to TEA. Coordinated school health programs submitted to TEA for review



must coordinate the four required components of: (1) health education; (2) physical education and physical activity; (3) nutrition/cafeteria services; and (4) parental involvement in kindergarten through Grade 8. Coordinated school health programs are integrated, planned, school-based programs that are designed to promote the physical, emotional, and educational development of students. They may be patterned after the Centers for Disease Control and Prevention's eight-component model that also includes health services, counseling and mental health services, healthy school environment, and health promotion for staff.

**Selection Criteria.** Selection of qualified coordinated health programs by the review committee will follow a two-step process. A submitted program will first be screened to determine whether it meets two mandatory criteria: (1) the program coordinates classroom health education, physical education and physical activity, nutrition/cafeteria services, and parental involvement and (2) the program is coordinated within and across Grades K-5, K-6, 6-8, 7-8 or K-8. A successfully screened program will then be evaluated for final approval using a rating scale based on the following criteria. (1) The program coordinates physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement. (2) The program is coordinated within and across all grade levels on an elementary, middle, or junior high school campus. (3) The program has a training component that includes physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement activities and coordinates the four required components. The training component must also include teaching staff and parents. (4) The program curricular components (health education and physical education) are based on the Texas Essential Knowledge and Skills for Health Education and the Texas Essential Knowledge and Skills for Physical Education. (5) The program includes assessment tools for schools to measure cognitive, behavioral, and attitudinal changes related to the four required components. (6) The program is based on health education theory and national standards for instructional and/or industry best practices in each of the four required components. (7) The program allows for tailoring to schools' individual needs and can be adapted to a variety of specific situations: ethnic diversity, children with disabilities, school schedules, socioeconomic status, geographic locations, and gender differences. (8) The program trains school district staff in the annual use of assessment and planning tools for school health programs and policies, such as the elementary school version of the School Health Index available at the National Centers for Disease Control and Prevention website at <http://apps.nccd.cdc.gov/shi>. (9) The program includes an evaluation of its nutritional services component that includes compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value. (10) The program must be peer-reviewed and show empirical evidence of effectiveness prior to submission.

**Further Information.** Required submission forms are available on the TEA website at [http://www.tea.state.tx.us/curriculum/hpe/coordinated\\_school\\_health.html](http://www.tea.state.tx.us/curriculum/hpe/coordinated_school_health.html). For clarifying information, contact Marissa L. Rathbone, Director of Health and Physical Education, Division of Curriculum, Texas Education Agency, by phone at (512) 463-9581 or by e-mail at [Marissa.Rathbone@tea.state.tx.us](mailto:Marissa.Rathbone@tea.state.tx.us).

**Deadline for Receipt of Materials.** Materials must be submitted to the Texas Education Agency, Division of Curriculum, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), December 1, 2006, to be considered. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency.

TRD-200606112

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: November 8, 2006



### Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8 or K-8 Developed by Texas School Districts

**Description.** The Texas Education Agency (TEA) is publishing notification that Coordinated School Health Programs may be submitted for review. The purpose of the review process is to assist school districts in meeting requirements of the Texas Education Code (TEC), §38.013 and §38.014. TEC, §38.013, requires TEA to make available to each school district one or more coordinated school health programs for elementary, middle, and junior high schools and to notify each school district of the program(s). TEC, §38.014, requires that each school district participate in the appropriate training for the implementation of a TEA-approved coordinated school health program in each elementary, middle, and junior high school in the district. Each school district is required to implement a coordinated school health program approved by TEA in each elementary, middle, and junior high school no later than the 2006-2007 school year.

**Program Requirements.** Any entity that elects to have a program reviewed is invited to send a complete description of the program to TEA. Coordinated school health programs submitted to TEA for review must coordinate the four required components of (1) health education; (2) physical education and physical activity; (3) nutrition/cafeteria services; and (4) parental involvement in kindergarten through Grade 8. Coordinated school health programs are integrated, planned, school-based programs that are designed to promote the physical, emotional, and educational development of students. They may be patterned after the Centers for Disease Control and Prevention's eight-component model that also includes health services, counseling and mental health services, healthy school environment, and health promotion for staff.

**Selection Criteria.** Selection of qualified coordinated health programs by the review committee will follow a two-step process. A submitted program will first be screened to determine whether it meets two mandatory criteria: (1) the program coordinates classroom health education, physical education and physical activity, nutrition/cafeteria services, and parental involvement; and (2) the program is coordinated within and across Grades K-5, K-6, 6-8, 7-8 or K-8. A successfully screened program will then be evaluated for final approval using a rating scale based on the following criteria.

- (1) The program coordinates physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement.
- (2) The program is coordinated within and across all grade levels on an elementary, middle, or junior high school campus.
- (3) The program has a training component that includes physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement activities and coordinates the four required components. The training component must also include teaching staff and parents.
- (4) The program curricular components (health education and physical education) are based on the Texas Essential Knowledge and Skills for Health Education and the Texas Essential Knowledge and Skills for Physical Education.

(5) The program includes assessment tools for schools to measure cognitive, behavioral, and attitudinal changes related to the four required components.

(6) The program is based on health education theory and national standards for instructional and/or industry best practices in each of the four required components.

(7) The program allows for tailoring to schools' individual needs and can be adapted to a variety of specific situations: ethnic diversity, children with disabilities, school schedules, socioeconomic status, geographic locations, and gender differences.

(8) The program trains school district staff in the annual use of assessment and planning tools for school health programs and policies, such as the elementary school version of the School Health Index available at the National Centers for Disease Control and Prevention website at <http://apps.nccd.cdc.gov/shi>.

(9) The program includes an evaluation of its nutritional services component that includes compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value.

Programs developed by school districts must use materials that are proven effective, such as TEA-approved textbooks or materials developed by nationally recognized and/or government approved entities.

Further Information. Required submission forms are available on the TEA website at [http://www.tea.state.tx.us/curriculum/hpe/coordinated\\_school\\_health.html](http://www.tea.state.tx.us/curriculum/hpe/coordinated_school_health.html). For clarifying information, contact Marissa L. Rathbone, Director of Health and Physical Education, Division of Curriculum, Texas Education Agency, by phone at (512) 463-9581 or by e-mail at [Marissa.Rathbone@tea.state.tx.us](mailto:Marissa.Rathbone@tea.state.tx.us).

Deadline for Receipt of Materials. Materials must be submitted to the Texas Education Agency, Division of Curriculum, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), December 1, 2006, to be considered. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency.

TRD-200606113

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 8, 2006

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a

proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 18, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Gulo Bandali dba Afton Oaks Cleaners; DOCKET NUMBER: 2006-1291-DCL-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104966288; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Anthony Forest Products Company; DOCKET NUMBER: 2006-0976-AIR-E; IDENTIFIER: RN102300589; LOCATION: Atlanta, Cass County, Texas; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; and 30 TAC §106.8(c)(1) and THSC, §382.085(b), by failing to maintain a copy of each Permit By Rule; PENALTY: \$5,000; Supplemental Environmental Project (SEP) offset amount of \$2,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D)--Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Aqua Utilities, Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2006-0775-MWD-E; IDENTIFIER: RN101516268; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11193001, Effluent Limitations and Monitoring Requirement Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits and by failing to meet quarterly whole effluent toxicity limits; PENALTY: \$24,750; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Mary Rathmann dba Bastrop Cleaners; DOCKET NUMBER: 2006-0822-DCL-E; IDENTIFIER: RN104153580; LOCATION: Bastrop, Bastrop County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Bolton Brite Way Cleaners, Inc.; DOCKET NUMBER: 2006-1006-DCL-E; IDENTIFIER: RN104160585, RN104164082, RN104164439, RN104160981, RN104161245, RN102153160, RN104164785, RN104163803, RN104165014,

RN104165857, RN104160593, RN104166285, and RN104160973; LOCATION: Lubbock and Wolfforth, Lubbock County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registration by completing and submitting the required registration forms; and 30 TAC §335.323(a) and the Code, §5.702, by failing to pay outstanding hazardous waste generation fees; PENALTY: \$12,031; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(6) COMPANY: C & L Services, LP; DOCKET NUMBER: 2006-1328-PST-E; IDENTIFIER: RN102822319; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: drilling rig manufacturer and transporter of excavation materials; RULE VIOLATED: 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances; and 30 TAC §334.50(b)(1)(A), (b)(2), (2)(A)(i), and (2)(A)(i)(III), and the Code, §26.3475(a) and (c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release, by failing to provide proper release detection for the product piping associated with the underground storage tank (UST) system, by failing to equip each separate pressurized line with an automatic line leak detector, and by failing to test the line leak detectors; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Catalina Contreras dba AAA Cleaners; DOCKET NUMBER: 2006-0725-DCL-E; IDENTIFIER: RN104443403; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2006-0904-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 22690 PSD-TX-751M1, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$9,350; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Citgo Products Pipeline Company; DOCKET NUMBER: 2006-0803-AIR-E; IDENTIFIER: RN100225739; LOCATION: Tarrant County, Texas; TYPE OF FACILITY: petroleum storage and transfer station; RULE VIOLATED: 30 TAC §122.121 and §122.241(b), Federal Operating Permit (FOP) Number O-1163, and THSC, §382.085(b), by failing to timely renew FOP O-1163 and failed to cease operations; PENALTY: \$3,150; Supplement Environmental Project (SEP) offset amount of \$1,260 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D)--Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Coletto Creek Power, LP; DOCKET NUMBER: 2006-0887-AIR-E; IDENTIFIER: RN100226919; LOCATION: Fannin, Goliad County, Texas; TYPE OF FACILITY: electricity generation plant; RULE VIOLATED: 30 TAC §122.145(2)(A) and §122.146(5)(D), FOP Permit Number O-00025, Compliance Certi-

fication Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations on the semi-annual deviation report and to report this failure on the subsequent annual certification report; PENALTY: \$2,400; Supplement Environmental Project (SEP) offset amount of \$960 applied to the retrofitting of three City of Victoria vehicles with nitrous oxide (NOx) reduction technology; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Adelia R. Robinson dba Crickets Cleaners; DOCKET NUMBER: 2006-1485-DCL-E; IDENTIFIER: RN104967179; LOCATION: New Boston, Bowie County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: City of Crockett; DOCKET NUMBER: 2006-0864-MWD-E; IDENTIFIER: RN101609675; LOCATION: Crockett, Houston County, Texas; TYPE OF FACILITY: domestic wastewater; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10154002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: \$5,310; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: Chong O. Murtuza dba Cuff & Collar; DOCKET NUMBER: 2006-1294-DCL-E; IDENTIFIER: RN104983846; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Jesse Gibson dba ETC; DOCKET NUMBER: 2006-0913-DCL-E; IDENTIFIER: RN103997185; LOCATION: Waxahachie, Ellis County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Gary Water Supply Corporation; DOCKET NUMBER: 2006-0982-PWS-E; IDENTIFIER: RN101436004; LOCATION: Panola County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM) and haloacetic acids; PENALTY: \$1,840; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Hamid Enterprises Inc. dba Dilleys Dry Cleaner; DOCKET NUMBER: 2006-1104-DCL-E; IDENTIFIER: RN102644242; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT

COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Bok I. Kim dba Heritage Dry Cleaners; DOCKET NUMBER: 2006-1498-DCL-E; IDENTIFIER: RN103992343; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Intercontinental Terminals Company; DOCKET NUMBER: 2006-1017-AIR-E; IDENTIFIER: RN100210806; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: multi-product bulk liquid storage and distribution terminal; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 1078, Special Conditions 5 and 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions and to route all emissions from Storage Tank 50-2 to the TK 50-2 flare; PENALTY: \$9,500; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Sun Ok Ha dba J Cleaners; DOCKET NUMBER: 2006-1378-DCL-E; IDENTIFIER: RN103963831; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: J&M Royal, Inc. dba \$1.19 Spencer Cleaners; DOCKET NUMBER: 2006-1288-DCL-E; IDENTIFIER: RN104553078; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$611; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Kahler Homes Ltd.; DOCKET NUMBER: 2006-0810-WQ-E; IDENTIFIER: RN104925847; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: construction sites for custom homes; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR) §122.26(a), and TPDES General Permit Number TXR150000 Part II Section D.3.a. and Part III Section F.7, by failing to implement storm water best management practices; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(22) COMPANY: L A F Enterprises, Inc. dba Comet Cleaners 1 and dba Comet Cleaners 2; DOCKET NUMBER: 2006-1043-DCL-E; IDENTIFIER: RN103989786 and RN104202171; LOCATION: McAllen, Hidalgo County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner registration fees; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335;

REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Laredo Regional Medical Center, L.P. dba Doctors Hospital of Laredo; DOCKET NUMBER: 2006-1059-PST-E; IDENTIFIER: RN101867703; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: office building for doctors; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detector; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Lubbock Independent School District; DOCKET NUMBER: 2006-0696-PST-E; IDENTIFIER: RN101780948; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: school bus fleet maintenance and garage; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.50(b)(2)(A)(i)(III) and (b)(2) and the Code, §26.3475(a), by failing to conduct proper release detection and by failing to test the line leak detectors; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel; 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i), and (5)(B)(ii), and the Code, §26.3467(a), by failing to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form and by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: \$12,150; ENFORCEMENT COORDINATOR: Judy Kuge, (817) 588-5800; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(25) COMPANY: Marek Family Enterprises, Inc. dba Kuntry Korner 4; DOCKET NUMBER: 2006-0833-PWS-E; IDENTIFIER: RN101847051; LOCATION: San Antonio, Atascosa County, Texas; TYPE OF FACILITY: public water supply with a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine monthly bacteriological samples and by failing to provide public notification of the failure to conduct bacteriological sampling; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Monarch Utilities I L.P. dba Oak Trail Shores Public Water Supply; DOCKET NUMBER: 2006-1068-PWS-E; IDENTIFIER: RN101380848; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$1,005; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Motiva Enterprises, LLC; DOCKET NUMBER: 2006-1259-AIR-E; IDENTIFIER: RN100238898; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum storage terminal; RULE VIOLATED: 30 TAC §§122.121, 122.143(2) and (4), and 122.241(b), and THSC, §382.085(b), by failing to submit

an application to renew site operating permit number O-00357 and continued to operate after its expiration; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Newport Municipal Utility District; DOCKET NUMBER: 2006-0986-MWD-E; IDENTIFIER: RN102689437; LOCATION: Harris County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11329001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$19,050; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: North Lauderdale, Inc. dba Tip Top Cleaners and dba Vogue Cleaners; DOCKET NUMBER: 2006-1087-DCL-E; IDENTIFIER: RN104963533 and RN104983861; LOCATION: Houston and Bellaire, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration late fees; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Long Le dba One Day Cleaners; DOCKET NUMBER: 2006-1449-DCL-E; IDENTIFIER: RN103961991; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$1,067; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: Roger Gomez dba Optimum Calves and Optimum Calves, L.L.C.; DOCKET NUMBER: 2006-1231-AGR-E; IDENTIFIER: RN104925334; LOCATION: Bailey County, Texas; TYPE OF FACILITY: dairy calf operation; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of agricultural wastewater; and 30 TAC §321.33(a), by failing to obtain authorization to construct control facilities and operate a confined animal feeding operation under a water quality general permit or individual permit; PENALTY: \$7,350; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(32) COMPANY: Randy Bixby dba Out on a Limb, Inc.; DOCKET NUMBER: 2006-1034-AIR-E; IDENTIFIER: RN102837382; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscaping and mulching plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent wood dust and mulch emissions from causing a nuisance condition; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(33) COMPANY: Kyung Mi Jeon dba Pace Cleaners; DOCKET NUMBER: 2006-1286-DCL-E; IDENTIFIER: RN104210158; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by

completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Road, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Pasadena Refining System, Inc.; DOCKET NUMBER: 2006-0664-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit a timely emissions event report; 30 TAC §116.115(c), Air Permit Number 20246, Special Condition 4, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §111.111(a)(1)(A), §116.115(b)(2)(F), Air Permit 5953 General Condition 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a 30- and 40-minute emissions event; PENALTY: \$14,364; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: City of Pflugerville; DOCKET NUMBER: 2006-0966-MWD-E; IDENTIFIER: RN101611440; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011845002, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$12,700; Supplemental Environmental Project (SEP) offset amount of \$10,160 applied to Lower Colorado River Authority (LCRA)--Household Hazardous Waste and Reusable Materials Collection; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(36) COMPANY: Ronald P. Schuler and Rusamee J. Schuler dba Port Neches Cleaners; DOCKET NUMBER: 2006-1279-DCL-E; IDENTIFIER: RN104004056; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: Magdalena Bazanes Vasquez dba Rex Cleaners; DOCKET NUMBER: 2006-1136-DCL-E; IDENTIFIER: RN104094156; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(38) COMPANY: RLY Cleaners, L.L.C. dba Metro Cleaners; DOCKET NUMBER: 2006-0868-DCL-E; IDENTIFIER: RN104091129, RN103955530 and RN104091178; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registration by completing and submitting the required registration form; PENALTY: \$810; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: SB & AB Corporation dba Able Cleaners; DOCKET NUMBER: 2006-1148-DCL-E; IDENTIFIER: RN100990480 and

RN104160890; LOCATION: Houston and Pasadena, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Sam's East, Inc.; DOCKET NUMBER: 2006-1018-AIR-E; IDENTIFIER: RN102190907; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: discount retailer of gasoline to club members; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the seven pounds per square inch absolute (psia) maximum Reid Vapor Pressure (RVP) requirement; PENALTY: \$1,020; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(41) COMPANY: Southwestern Bell Telephone, L.P.; DOCKET NUMBER: 2006-1094-AIR-E; IDENTIFIER: RN102387826; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: telephone service company with a fleet refueling station; RULE VIOLATED: 30 TAC §115.252 and THSC, §382.085(b), by failing to prevent the storage and transfer of gasoline with a RVP greater than seven psia; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(42) COMPANY: Spring Creek Utility District; DOCKET NUMBER: 2006-1391-MWD-E; IDENTIFIER: RN101514792; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11574001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$3,640; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Texas Barge & Boat, Inc.; DOCKET NUMBER: 2006-0874-AIR-E; IDENTIFIER: RN102037959; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: barge cleaning and repair terminal; RULE VIOLATED: 30 TAC §116.110(a)(4), §122.143(4), FOP Number O-1698, General Terms and Conditions and Special Condition 13A, and THSC, §382.085(b) and §382.0518(a), by failing to obtain permit authorization prior to venting barges; and 30 TAC §122.143(4), §122.125(2)(B) and (C), FOP Number O-1698, General Terms and Conditions, and THSC, §382.085(b), by failing to report deviations; PENALTY: \$21,700; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Timber Tech Texas, Inc.; DOCKET NUMBER: 2006-0929-WQ-E; IDENTIFIER: RN100846013; LOCATION: Guadalupe County, Texas; TYPE OF FACILITY: wood and metal truss fabrication; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and TPDES General Permit Number TXR050000, Part III, Sections A.5.(f) - (h), A.7.(b), D.1.(b), and E.1.(a), by failing to conduct the annual comprehensive site compliance evaluation in 2005, by failing to conduct hazardous metals monitoring or obtain a waiver from the requirements in 2004 and 2005, by failing to conduct training for P2 Team in 2005, by failing to conduct training for employees not directly responsible for storm water pollution prevention in 2005, by failing to conduct periodic site inspections, by failing to conduct quarterly visual monitoring of storm water outfalls, and by failing

to include a description of the structural controls in the storm water prevention plan; PENALTY: \$5,795; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(45) COMPANY: Uy Eang Chou dba Town Park Cleaners; DOCKET NUMBER: 2006-1637-DCL-E; IDENTIFIER: RN100690437; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$770; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(46) COMPANY: Victor Resendiz dba Vics Alterations; DOCKET NUMBER: 2006-1212-DCL-E; IDENTIFIER: RN104103775; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$353; ENFORCEMENT COORDINATOR: Patricia Chawla, (512) 239-0739; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: Yarana, Inc. dba Omega Cleaners; DOCKET NUMBER: 2006-1081-DCL-E; IDENTIFIER: RN103956223; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration late fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(48) COMPANY: ZSA Investment Inc. dba J's Shoppers Mart; DOCKET NUMBER: 2006-0493-PST-E; IDENTIFIER: RN102259504; LOCATION: Schertz, Guadalupe County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding late fees; PENALTY: \$3,925; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200606092

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Executive Director's Response to Public Comments and Explanation of Changes on General Permit No. TXG110000

This general permit is proposed under the authority found in Texas Water Code (TWC), §26.040. General Permit Number TXG110000 would authorize discharges of facility wastewater and storm water associated with industrial activities from ready-mixed concrete plants, concrete products plants, and their associated facilities into or adjacent to waters in the state.

Prior to issuing a general permit, the executive director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) must comply with TWC, §26.040(d) and 30 TAC §205.3(c). Both provisions require the ED to respond to all timely public comments that raise *relevant and material* or *significant* issues. The ED must make these responses publicly available and must file them with the commission's chief clerk at least ten days before the TCEQ considers whether to approve the general permit. Accordingly, the ED now files this response to comments (Response) to address concerns raised by the public with regard to a proposed general permit under the Texas Pollutant Discharge Elimination System (TPDES). In certain instances the general permit was revised in response to comments received.

In addition, the ED has made an additional change to the general permit. This change is intended to clarify provisions in the general permit, to refer to other current regulatory requirements, and to provide consistency within the general permit and with other state and federal regulations.

### The Executive Director's Response to Comments

The Office of Chief Clerk received timely letters from the following entities: Resource Management Associates, Inc. (RMA); TXI Operations, L.P. (TXI); Thompson & Knight LLP; and Zachry Construction Corporation (ZCC). Some of these public comments have prompted changes in the proposed general permit while others have not.

### Comments and Responses

**Comment Number 1:** RMA commented that the critical distinction between what is meant by *contact storm water* and *storm water associated with industrial activities* is unclear and should be clarified in the permit. They state that the terms *storm water associated with industrial activity* and process water are generally used by the United States Environmental Protection Agency (EPA) and by other states. The federal definition of *storm water associated with industrial activity* specifically includes storm water that has come into contact with any raw material, product, by-product, co-product, intermediate, or waste material which is the definition in the draft permit for *contact storm water*. RMA requested that a distinction be made between *contact storm water* and *storm water associated with industrial activities*.

TXI also commented that the definitions of *contact storm water* and *storm water* seem to overlap and are confusing. They request that the permit clarify, for monitoring purposes, that *contact storm water* is a type of storm water and should be monitored as such, or request that the definition for *contact storm water* be removed.

**Response Number 1:** The term *contact storm water* was carried over from the current TXG110000 permit. The TCEQ agrees that the definition of *storm water discharge associated with industrial activities* found in the federal regulations at 40 Code of Federal Regulations §122.26(b)(14) includes *contact storm water* as defined in the draft permit. The term *contact storm water* will be deleted throughout the proposed permit and replaced with *storm water discharge associated with industrial activities* which will be used in reference to storm water discharges authorized by this general permit. The new definition for storm water associated with industrial activities reads as follows:

*Storm water discharge associated with industrial activities - The discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term includes but is not limited to, storm water discharges from storage areas for raw materials and intermediate and final products, and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The term excludes areas*

*located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.*

**Comment Number 2:** RMA commented that the permit is not technically accurate in terms of how the concrete industry operates. They state that typically process wastewater and storm water can be separated, as is the trend within the concrete industry. Relatively few operations within the concrete industry discharge commingled storm water and process wastewater. They request that a clear distinction between storm water discharges and process wastewater be made and that a clearly defined set of effluent limits be set for process wastewater/commingled discharges and a second set for storm water discharges. For storm water discharges, they recommend benchmark values in line with the TPDES Multi-Sector General Permit, General Permit Number TXR050000. They state that the current draft is very problematic for the industry in regards to storm water discharges and that, without separate sets of discharge standards for process and storm water discharges, the draft permit implies that all discharges are commingled, which is not the case.

TXI also requested a separate set of limits for outfalls that discharge facility wastewater and outfalls that discharge storm water associated with industrial activities. They commented that the proposed TXG110000 General Permit provides only one set of numeric limitations for all defined types of discharges, which is not consistent with most state's National Pollutant Discharge Elimination System (NPDES) general permits for ready-mixed concrete facilities. TXI requested an additional set of numeric limits, similar to those in TXR050000, for storm water outfalls in the proposed TXG110000. According to TXI, the additional set of numeric limits, unique to storm water only outfalls, would offer a long term facility design strategy that could be implemented more cost effectively and facilitate industry compliance with existing state regulations for storm water only outfalls.

**Response Number 2:** General Permit TXR050000 was developed to regulate storm water discharges from industrial facilities. The permit currently allows concrete facilities to obtain coverage for storm water only discharges with the requested monitoring requirements. However, TXR050000 also states that coverage may not be allowed under specific conditions. If concrete facilities covered by the requirements of this general permit segregate the storm water from process wastewater discharges, then it is appropriate to require separate discharge requirements in order to maintain consistency with TXR050000 and other state-approved storm water general permits. This general permit has been revised to include quarterly benchmark monitoring requirements for storm water only discharges. The numeric effluent limitations for facility wastewater and facility wastewater commingled with storm water discharges will remain as written in the draft general permit. The parameters to be sampled for the benchmark monitoring requirements for storm water only discharges are total suspended solids, pH, oil and grease, and total iron. Part III, Permit Requirements, Section A, has been revised as follows:

### Part III. Permit Requirements

#### Section A. Facility Wastewater and Facility Wastewater Commingled with Storm Water Associated with Industrial Activity.

Eligible discharges of facility wastewater and facility wastewater commingled with storm water associated with industrial activity are subject to the following numeric effluent limitations:

### Monthly Effluent Monitoring

<u>Parameter</u>	<u>Daily Maximum Limitations</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow	Report MGD	Estimate	1/month*
Oil and Grease	15 mg/L	Grab	1/month*
Total Suspended Solids	65 mg/L	Grab	1/month*
pH	6.0-9.0 Std. Units	Grab	1/month*

When discharging.

### Yearly Effluent Monitoring

<u>Parameter</u>	<u>Monthly Average Limitations</u>	<u>Daily Maximum Single Grab Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Arsenic, total	0.1 mg/L	0.3 mg/L	Grab	1/year
Barium, total	1.0 mg/L	4.0 mg/L	Grab	1/year
Cadmium, total (inland waters)	0.05 mg/L	0.2 mg/L	Grab	1/year
Cadmium, total (tidal waters)	0.1 mg/L	0.3 mg/L	Grab	1/year
Chromium, total	0.5 mg/L	5.0 mg/L	Grab	1/year
Copper, total	0.5 mg/L	2.0 mg/L	Grab	1/year
Lead, total	0.5 mg/L	1.5 mg/L	Grab	1/year
Manganese, total	1.0 mg/L	3.0 mg/L	Grab	1/year
Mercury, total	0.005 mg/L	0.01 mg/L	Grab	1/year
Nickel, total	1.0 mg/L	3.0 mg/L	Grab	1/year
Selenium, total (inland waters)	0.05 mg/L	0.2 mg/L	Grab	1/year
Selenium, total (tidal waters)	0.1 mg/L	0.3 mg/L	Grab	1/year
Silver, total	0.05 mg/L	0.2 mg/L	Grab	1/year
Zinc, total	1.0 mg/L	6.0 mg/L	Grab	1/year

When discharging.

Samples must be collected at a point immediately following discharge from the outfall and prior to commingling with the receiving water.



**Section B. Storm Water Discharge Associated with Industrial Activity**

1. Discharges of storm water associated with industrial activity where not commingled with facility wastewater are subject to the following benchmark monitoring values:

**Storm Water Associated with Industrial Activities Benchmark Monitoring**

<b><u>Benchmark Parameter</u></b>	<b><u>Benchmark Value</u></b>
Oil and Grease	15 mg/L
Total Suspended Solids	100 mg/L
pH	6.0 - 9.0 Standard Units
Total Iron	1.0 mg/L

2. Sampling is required on a quarterly basis and shall be conducted during the following periods: first quarter - January through March; second quarter - April through June; third quarter - July through September; and fourth quarter - October through December. Applicants shall begin sampling in the first full quarter following submission of the NOI (notice of intent). If a facility maintains an inactive status for an entire quarter, quarterly sampling may be waived. A facility must be inactive with no industrial materials or activities exposed to storm water to exercise this waiver. A certification must be maintained with your SWP3 (storm water pollution prevention plan) stating that the site is inactive. The certification must be signed according to 30 TAC §305.128 (relating to Consolidated Permits).

3. All storm water samples shall be collected from the discharge resulting from a storm event that is at least 0.1 inches of measured precipitation that occurs at least 72 hours from the previously measurable storm event.

4. A minimum of one grab sample shall be taken within the first 30 minutes of discharge. If it is not practicable to take the sample, or to complete the sampling, within the first 30 minutes, sampling must be completed within the first hour of discharge. If sampling is not completed within the first 30 minutes of discharge, the reason must be documented and attached to all required reports and records of the sampling activity.

5. The permittee must compare the results of sample analyses to the benchmark values above and must include this comparison in the overall assessment of the SWP3s effectiveness. Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations. Results of analyses are indicators that the SWP3 should be assessed and modifications may be necessary to protect water quality. The Pollution Prevention Team must investigate the cause for each exceedance and must document the results of this investigation in the SWP3 by the end of the quarter following the sampling event.

The Pollution Prevention Team investigation must identify the following:

- (a) any additional potential sources of pollution, such as spills that might have occurred,
- (b) necessary revisions to the Good Housekeeping Measures section of the SWP3,
- (c) additional BMPs (best management practices), including a schedule to install or implement the BMPs,

(d) identification of other parts of the SWP3 that may require revisions in order to meet the goal of the benchmark values.

Background concentrations of specific pollutants may also be considered during the investigation.

If the Pollution Prevention Team is able to relate the cause of the exceedance to background concentrations, then subsequent exceedances of benchmark values for that pollutant may be resolved by referencing earlier findings in the SWP3. Background concentrations may be identified by laboratory analyses of samples of storm water run-on to the permitted facility, by laboratory analyses of samples of storm water run-off from adjacent non-industrial areas, or by identifying the pollutant is a naturally occurring material in soils at the site.

6. A permitted facility with an inactive status must provide written notification to the TCEQ's Industrial Permits Team (MC-148) and the appropriate regional office. Following this notification, permit requirements to sample, inspect, examine, or otherwise monitor storm water discharges are waived during the period that a facility maintains inactive status. A facility must be inactive with no industrial materials or activities exposed to storm water to exercise this waiver. A certification must be maintained with your SWP3 stating that the site is inactive. The certificate must be signed according to 30 TAC §305.128 (relating to Consolidated Permits).

Inactive facilities must notify the executive director in writing at least 30 days before commencing industrial activities and transferring to active status. Inactive status does not apply to facility wastewater or facility wastewater commingled with storm water discharges associated with industrial activities.

**Comment Number 3:** TXI requested that the sampling frequency for storm water only discharges be changed to quarterly to be consistent with the regulatory requirements of storm water sampling of TXR050000.

**Response Number 3:** As discussed in Response 2 of this document, Part III, Section B.2 of the general permit now states that the frequency of storm water monitoring shall be once per quarter for all parameters.

**Comment Number 4:** TXI states that they were unable to find another state that requires annual Whole Effluent Toxicity (WET) testing or 24-hour acute biomonitoring for this industry as does this general permit draft. They commented that, during the 1998 comment period for the first issuance of this permit, the Texas Natural Resource Conservation Commission (TNRCC) (presently known as the TCEQ) and the Texas Aggregates and Concrete Association (TACA) made comments to the EPA on the issue of WET testing. TXI comments that the TNRCC and the TACA stated, in 1998, that the WET testing require-

ments are more stringent than the TNRCC requirements which say the discharge shall not be acutely toxic but do not require toxicity testing to demonstrate compliance with the provision. The EPA replied that the basis for the toxicity limit is Texas Water Quality Standards (30 TAC §307.6(e)(2)(B)) and that they are required under 40 CFR §122.44(d) and 40 CFR §122.44(i) to include the monitoring limits and requirements in the permit. TXI requested that *the TCEQ reiterate the argument that WET testing is an expensive and onerous requirement that was clearly not intended for operations authorized under this permit.*

**Response Number 4:** To be consistent with the requirements of the Multi-Sector Storm Water Permit, General Permit Number TXR050000, the draft general permit has been revised to exempt storm water only outfalls from WET testing. Although this general permit is not required to have WET testing for facility wastewater outfalls and it would not be typical for individual permits where detailed applications with data are submitted for this type of discharge, WET testing can be used as a good indicator of toxicity for this permit. Therefore, WET testing will continue to be required for facility wastewater outfalls.

**Comment Number 5:** TXI commented that Part III., B.2. of the draft general permit states that, if storm water outfalls have been demonstrated to be substantially the same, sampling and monitoring may be conducted at one of the outfalls. TXI requested that facility wastewater outfalls, which meet the same necessary criteria to be deemed substantially similar, be given reduced monitoring requirements, as do the storm water outfalls in the draft permit.

**Response Number 5:** Reduced monitoring for substantially similar storm water dischargers is allowed in the general permit due to best management practices (BMPs) and other requirements of the storm water pollution prevention plan (SWP3). The discharge of facility wastewater does not include such controls and requirements, and it is not the practice of the TCEQ to allow reduced sampling of substantially similar facility wastewater dischargers in individual permits. Facility wastewater has a greater potential to discharge pollutants which can in turn adversely affect aquatic life or human health. Therefore, no changes were made to the general permit based on this comment.

**Comment Number 6:** TXI requested language be added to the permit to define situations which would exempt the collection of an effluent sample if a rainfall event takes place while the plant is not in operation, or when there are safety issues such as severe weather events. TXI commented that they have contacted the TCEQ regional offices in the past regarding these issues, but it would be beneficial to TXI and the TCEQ to explicitly define in the permit what discharge a permittee is excused from sampling.

**Response Number 6:** Due to the separation of storm water only discharges from facility wastewater discharges as discussed in Response 2 of this document, the requested language is beneficial to both the permittee and the TCEQ regional offices. Therefore, based on the request from TXI, the following language has been added to the general permit in Part III, Section I. 8:

*Requirements to sample, inspect, examine or otherwise monitor storm water discharges within a prescribed monitoring period may be temporarily suspended for adverse weather conditions. Adverse weather conditions are conditions that are either dangerous to personnel (e.g., high wind, excessive lightning) or weather conditions that prohibit access to a discharge (e.g., flooding, freezing conditions, extended periods of drought). Adverse conditions that result in the temporary suspension of a permit requirement to sample, inspect, examine, or otherwise monitor storm water discharges must be documented and included as part of the SWP3. Documentation shall include the date,*

*time, names of personnel that witnessed the adverse condition, and the nature of the adverse condition.*

In addition, as stated in the response to Comment 2, Part III, Section B.2, if a facility remains inactive for an entire quarter, quarterly sampling may be waived for storm water discharges associated with industrial activity. A facility must be inactive with no industrial materials or activities exposed to storm water to exercise this waiver.

**Comment Number 7:** Thompson and Knight LLP, commented that Part II, B.1 stating that a *separate authorization may be required for discharges into or adjacent to water in the state, located within ten stream miles upstream of the Edwards Aquifer Recharge Zone* is defective. They state that it is vague and unclear whether the statement requires additional requirements under Chapter 213 or an individual permit. They assert that there must be a legal standard by which a permittee may determine whether it is eligible for this permit. According to this commenter, this is necessary to avoid an applicant filing an application and beginning operations only to find out that the agency determines by unpublished criteria that the permittee's operations are not properly authorized.

Thompson and Knight further commented that the provision applicable to facilities located *ten stream miles upstream of the Edwards Aquifer Recharge Zone* is vague and unenforceable because it does not provide adequate notice of which facilities are subject to the standard. They also stated that there does not appear to be statutory or regulatory authority to impose additional controls in this area, which appears greater in scope than the Edward's Aquifer Recharge and Contributing Zones. In another related comment, Thompson and Knight LLP commented that Part II, C.3 in the permit establishes additional notice of intent (NOI) submittal requirements for discharges located within ten miles upstream of the Edwards Aquifer Recharge Zone and is defective because it fails to provide adequate notice of which facilities are subject to the standard.

**Response Number 7:** The ED declines to make changes based upon Comment 7. The agency's rules relating to the Edwards Aquifer are found in 30 TAC Chapter 213. Chapter 213 regulates certain activities and requires the submission of various plans for the ED's approval (30 TAC §213.4 and §213.23). In addition, §213.6(c)(4) sets out the requirements for existing and new industrial discharges within ten stream miles upstream of the recharge zone. For these reasons, the general permit informs potential permittees that Chapter 213 may have other regulations applicable to the discharge and may require additional authorizations.

Part II, B.1 establishes a legal standard by which a permittee may determine eligibility to discharge under this general permit. As stated previously, Part II, B.1 refers potential permittees to Chapter 213 if they proposed to discharge into or adjacent to water in the state within ten stream miles of the recharge zone of the Edwards Aquifer. It is the permittee's responsibility to review Chapter 213 and the location of the discharge to determine whether its proposed activity will trigger other regulatory provisions.

Furthermore, the ten stream mile standard set out in the general permit is not vague and unenforceable and is currently used in the regulation of activities under Chapter 213. The ten stream miles standard was established through the rulemaking process for use in determining regulatory requirements under Chapter 213. For example, §213.6(c)(4) addresses industrial discharges *within zero to ten (0 to 10) miles upstream of the recharge zone*. . . . Also, *(t)he recharge zone is identified as that area designated on official maps located in the agency's central office and in the appropriate regional office.* (30 TAC §213.3(27)). Therefore, the ten stream mile standard is not vague and unenforceable.

Thompson & Knight also commented that since Part II, C.3 relies on the ten stream mile standard, it is also defective for failing to provide adequate notice of which facilities are subject to the standard. As stated previously, the ten stream mile standard is not vague and unenforceable and is established through the agency rulemaking process. Potential permittees may consult with agency maps in the central and applicable regional offices to determine whether the permittee needs to submit an NOI to the TCEQ regional office as required by Part II., C.3.

**Comment Number 8:** ZCC commented that the definition of *Associated Facilities* is unclear and they would like the general permit to clarify the use of the term. They requested that the commission add Standard Industrial Classification (SIC) Code 1629 to the permit to include construction equipment. This addition would cover concrete plants that are owned and operated by a construction company to be used on construction project sites.

**Response Number 8:** The ED agrees that SIC Code 1629, *Heavy Construction, Not Elsewhere Classified* could be an associated facility covered by this general permit but other types of discharges associated with this SIC code should not be covered. The ED also acknowledges that both SIC Codes 3271 and 3272 are covered by the general permit and that contractors engaged in concrete construction work are classified in Division C, *Construction*, which contains SIC Code 1629. Therefore, the ED agrees that SIC Codes 3271, 3272, and 3273 are not exhaustive and that other types of SIC codes not listed are also regulated under this general permit. The fact sheet has been revised to clarify that other entities not listed under these SIC codes are covered by this general permit. The change can be found in Section I., Summary and reads as follows in its entirety:

*The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue a general permit authorizing discharges of facility wastewater and storm water associated with industrial activities into or adjacent to water in the state from ready-mixed concrete plants, concrete products plants, and their associated facilities (SIC 3271, 3272, and 3273). The permit specifies which facilities are authorized under this general permit and those which must obtain an individual permit. If an entity wants authorization under this general permit but does not fall under SIC Codes 3271, 3272 or 3273 (for example, SIC Code 1629), it may contact the TCEQ's Storm Water and Pretreatment Team regarding the applicability of the permit for their facility.*

**Comment Number 9:** ZCC commented on language in Part II, C.1 and C.2 regarding when an applicant is authorized to begin discharging. ZCC stated that the language regarding the submittal of an NOI 30 days before beginning discharge in C.1 and the language regarding when a discharge may begin, 48 hours after a completed NOI is postmarked in C.2 is confusing. They requested the language 30 days be deleted or changed to 48 hours.

**Response Number 9:** The ED agrees with ZCC and has deleted the 30-day requirement which was continued from the existing permit. The general permit will continue to provide 48 hour provisional coverage. Part II, Section C.1 now reads in its entirety:

*Facilities that seek to discharge or dispose of wastewater under authority of this general permit must submit a completed Notice of Intent (NOI) on a form approved by the executive director. The NOI must include, at a minimum, the legal name and address of the operator and owner, the facility name and address, the location of the discharge (including the street address, if applicable, and the county), the name of the receiving water, and a description of the facility(s) (ready-mixed concrete and/or concrete products plants, and associated facilities), and whether storm water associated with an industrial activity is discharged. Discharges authorized under the previously expired general permit (TXG110000, which expired on February 14, 2005) are required*

*to submit a new NOI within 90 days of issuance of this general permit to continue authorization.*

*Discharges of wash out water from concrete trucks at off-site construction sites are not required to submit an NOI for coverage under this general permit (See Part III, Section G).*

**Comment Number 10:** ZCC commented that a specific statement as to what sampling is required should be included in the permit. They recommended the following language be added to Part III, Section B.1 of the permit: *Sampling and testing of eligible discharges consisting of a single grab sample collected from a representative rain event once each month shall be performed.*

**Response Number 10:** Revisions have been made to Part III of the permit, as discussed in Response 2 of this document, which requires quarterly benchmark sampling and testing for storm water discharges associated with industrial activities. Therefore, no changes were made in response to this comment.

**Comment Number 11:** ZCC commented that language should be included in the permit to provide relief to permanent and temporary concrete plants from sampling and testing when: Plants are shut down, effluent from the plant would not be representative of an operation plant situation, and personnel are not on site to obtain samples. They recommended the following language be added to the permit: *Sampling and testing of permanent and portable concrete plants that are not in operation within one week prior to a representative rain event is not required.*

**Response Number 11:** When plants are shut down, the permit requires in Part II, Section D that a permittee shall terminate coverage through submittal of a notice of termination when, among other provisions, the discharge of wastewater becomes unnecessary, is delayed, or is completed. If the operator determines that the conditions for termination of the general permit are not required, the monthly Discharge Monitoring Report (DMR) should reflect no discharge during monthly periods when the plant is not in operation and facility wastewater was not discharged. The addition of Part III, Section B.6, discussed in Response 2, allows an inactive facility to temporarily waive sampling and testing requirements of storm water discharges as requested. A facility must be inactive with no industrial materials or activities exposed to storm water to exercise this waiver.

**Comment Number 12:** ZCC recommended that the first sentence in Part III, Section B.1 be revised to read: *Monitoring, sampling, examinations, and inspections of eligible discharges that are required . . . is representative for local storm events for the sampling period.* They commented that it is not the intent of the permit to allow combined discharges.

**Response Number 12:** Amended Part III., Section B. *Monitoring at Substantially Similar Storm Water Outfalls* is specific for storm water discharges associated with industrial activities. The ED has determined that the current language is appropriate and no changes are made to the permit based on this comment.

**Comment Number 13:** ZCC recommended that a testing waiver be allowed if sample test results are consistently below the numeric effluent limits of the general permit. They recommended the following language be included in the general permit: *If sampling and testing results are consistently below numerical effluent limits over a period of 4 months, then a waiver may be obtained to reduce the frequency of sampling and testing to one grab sample each three months. A waiver may be obtained by providing written notification and copies of lab reports to the Director.*

**Response Number 13:** Due to variability of the constituents found in facility wastewater, the once per month monitoring frequency, con-

tinued from the existing permit, is appropriate for this type of wastewater. Should a facility authorized under this general permit conclude that less frequent monitoring is appropriate for their facility, they may submit an individual permit application justifying this request. The ED would review the proposed discharge and impacts on a site-specific basis. Therefore, the ED has determined that the current frequencies are not excessive and no changes were made to the general permit.

**Comment Number 14:** ZCC stated that a statement is needed that will make it clear to TCEQ enforcement personnel that concrete plants that do not discharge any storm water or process water are not required to have a TXG110000 permit. They requested the following language be added to the permit: *Ready-mix concrete plants and concrete products plants that do not discharge facility wastewater, contact storm water, or storm water as a result of on-site containment, are not required to have coverage under this General Permit.*

**Response Number 14:** The permit states in Part II, Section A.1 that the purpose of this general permit is to regulate the discharge of facility wastewater and storm water associated with industrial activities from ready-mixed concrete plants, concrete products plants, and their associated facilities (SIC 3271, 3272, and 3273). Regional inspectors and enforcement personnel are familiar with the requirements of the general permit and trained to recognize permit applicability. Also, Part III, C of the fact sheet for this draft general permit states that facilities that dispose of wastewater and/or storm water by recycling, pumping and hauling, discharge to a publicly owned treatment works (POTW), underground injection in accordance with 30 TAC Chapter 331, or discharge to aboveground storage tanks are not required to obtain coverage until this general permit. Therefore, no additional language was added to the permit as requested.

**Comment Number 15:** ZCC commented that being able to use water for dust suppression only when *the area specified is not in use* limits uses of water. ZCC cites that air permits for concrete plants require that dust be controlled on plant roads and that whether a plant is in operation should not be considered by this permit. They recommended that this part of Section F.2 should be deleted.

In conjunction with this comment, ZCC recommended the following language be added to the permit to prevent mud being tracked off site: *Best Management Practices will be used to prevent off site tracking of mud resulting from use of wastewater for dust control.*

**Response Number 15:** In response to the comment, Part III, Permit Requirements, Section G, Item 2 has been revised to read:

*Application of facility wastewater or storm water for soil compaction and irrigation shall be accomplished only when the area specified is not in use. This restriction does not apply to dust suppression activities. Using facility wastewater or storm water for dust suppression, soil compaction, and irrigation shall not occur during times when the ground is frozen, the ground has standing water, the ground is saturated, or within 24 hours of a rainfall event of 0.5 inches or greater during a 24-hour duration. Best management practices shall be used to prevent off site tracking of mud resulting from the use of wastewater or storm water for dust suppression.*

**Comment Number 16:** ZCC commented that the permit did not include a definition of where water can be used for dust control. They state that it would be advantageous to use wastewater and storm water collected from portable plants installed for and dedicated to supply concrete to construction projects, on the construction project. They recommend the following statement be added to the permit: *Wastewater may be used on construction project dust control where a portable concrete plant is set up to serve only that project. Use of water must meet the same requirements for use as dust control as is required for concrete plant sites.*

**Response Number 16:** Part III, Permit Requirements, Section G, Item 5 has been added to the permit. This item reads in its entirety as follows:

*Treated facility wastewater and storm water may be used for dust control if collected from portable concrete plants installed and dedicated to supply concrete for a construction project. Dust suppression shall be carried out as a best management practice, not as a wastewater disposal method.*

**Comment Number 17:** ZCC commented that in Part III, G.2, the word *infiltration* seems to imply water being filter (sic) or coming onto the site, and recommended the word *ground absorption* be used instead. They also commented that *shallow pits* are not defined and that clarification is needed. They would also like the following language added to the permit: *Concrete trucks may be washed in unlined collection pits used by concrete plants to collect process waste and storm water.*

**Response Number 17:** The term *infiltration* is commonly used to describe the movement of water through the soil surface into the soil. No changes will be made to the permit regarding this term.

In regards to the comment that the term *shallow pits* is not defined and that clarification is needed, there is no standard definition for a shallow pit and the term is variable, based on site-specific circumstances. A shallow pit may be a pit that can be excavated by heavy machinery, such as a bulldozer and should not intersect a shallow water table. No changes were made to the permit based on this comment.

Concrete truck wash water is considered facility wastewater and can be managed similar to other facility wastewater authorized in the permit. Part III, Section H.1, states that the *direct discharge of concrete truck wash out water to waters in the state, including discharge to storm sewers is prohibited by this general permit.* No changes were made to the permit based on this comment.

#### Other Changes to the General Permit

**Change Number 1.** The definition of *operator* has been changed and the definition of *owner* has been added. The general permit has also been revised throughout to include owner and operator as required by 30 TAC §305.43. These changes were also made to provide clarification throughout the general permit rather than rely solely on the definition of *operator* which included both the owner and operator. The definitions provide consistency with 30 TAC §305.2(24) and (26) and now read as follows:

*Operator - The person responsible for the overall operation of a facility.*

*Owner - The person who owns a facility or part of a facility.*

TRD-200606089

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Notice of Issuance of a New Air Quality Standard Permit for Boilers

The Texas Commission on Environmental Quality (TCEQ) is issuing a new standard permit for boilers under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The standard permit for boilers will be effective November 3, 2006.

Copies of the standard permit for boilers may be obtained from the TCEQ Web site at <http://www.tceq.state.tx.us/assets/public/permit->

ting/air/NewSourceReview/Combustion/boiler\_sp.pdf or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250.

#### OVERVIEW OF AIR QUALITY STANDARD PERMIT

The TCEQ is issuing a new air quality standard permit for boilers. This new standard permit will not replace the current permit by rule for boilers with a heat input of less than or equal to 40 million British thermal units per hour (MMBtu/hr), but will provide another authorization mechanism for boilers with a heat input of greater than 40 MMBtu/hr.

The new source review program under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to modify any existing facility that may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, to satisfy the *de minimis* criteria of §116.119, *De Minimis* Facilities or Sources, or satisfy the conditions of a flexible permit, standard permit, or a permit by rule before any actual work is begun on the facility.

#### PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of this standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, Lower Rio Grande Valley, Lubbock, Permian Basin, San Antonio, and Tyler. The date for these publications was April 14, 2006. The public comment period was from the date of publication until 5:00 p.m., May 19, 2006.

#### PUBLIC MEETINGS

A public meeting on the proposal was held on May 16, 2006, at 10:00 a.m., at the Texas Commission on Environmental Quality in Building B, Room 201A, 12100 Park 35 Circle, Austin, Texas. There were no attendees at the meeting and it was cancelled.

#### ANALYSIS OF COMMENTS

Written comments were received from the Houston Regional Group of the Sierra Club (HSC). No oral comments were received.

The HSC expressed concern that a standard permit was not an appropriate authorization mechanism for boilers, since a case-by-case review of permit applications would ensure application of Best Available Control Technology (BACT), lowest achievable emission rate (LAER), and appropriate source monitoring technology.

The commission is not changing the permit in response to this comment. THSC, §382.0518(b) requires the application of current BACT to any standard permit. This standard permit requires BACT as described in the Permit Condition Analysis and Justification section of the Technical Summary.

The LAER is a requirement of federal nonattainment permits. New facilities or modifications that trigger any type of federal new source review permit (including a nonattainment permit) requirement cannot be authorized under this standard permit.

This standard permit requires sampling of emissions, within 90 days of installation or modification of the source, to ensure initial compliance with all emission requirements. Additionally, continued demonstration of compliance with emission requirements is required under sections 6 and 7 of this standard permit.

The HSC requested the addition of a permit condition that prohibits use of the standard permit to authorize any facility or modification that is subject to federal new source review permitting.

The commission agrees to make this addition to the standard permit.

The HSC also requested that the phrase, "local air pollution control agencies having jurisdiction," be added to paragraphs (5)(B)(i), (5)(B)(vi), and (8)(B).

The commission agrees to make this addition to the standard permit.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 18, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: James Jennings dba Jennings Conoco & Auto; DOCKET NUMBER: 2004-1977-PST-E; TCEQ ID NUMBER: RN102047487; LOCATION: 901 Hall Avenue, Littlefield, Lamb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$950; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Lubbock Regional

Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(2) COMPANY: Liaqat Hussain dba Huffman Gas & Grocery; DOCKET NUMBER: 2003-0933-PST-E; TCEQ ID NUMBER: RN100918705; LOCATION: 11101 Farm-to-Market Road 1960, Huffman, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,210; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Mario Ramos and Olga Ramos; DOCKET NUMBER: 2006-0377-OSS-E; TCEQ ID NUMBER: RN104298245; LOCATION: 508 East Carolyn Street, Hebronville, Jim Hogg County, Texas; TYPE OF FACILITY: on site sewage facility; RULES VIOLATED: 30 TAC §285.70, and Texas Health and Safety Code, §366.017(b), by failing to repair the malfunctioning facility to prevent the occurrence of nuisance conditions; PENALTY: \$2,750; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: RFK Enterprises Inc. dba Food Spot 4; DOCKET NUMBER: 2004-2100-PST-E; TCEQ ID NUMBER: RN102449352; LOCATION: 1320 North 11th Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$2,910; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200606095

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 18, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of

the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 787113087 and must be **received by 5:00 p.m. on December 18, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Adventure Camp, Inc. dba Y.O. Adventure Camp; DOCKET NUMBER: 2006-0520-PWS-E; TCEQ ID NUMBER: RN101194561; LOCATION: on Highway 41, 15 miles west of Mountain Home, Mountain Home, Kerr County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(1)(B), and Texas Health and Safety Code (THSC), §341.0315(c), by exceeding the Acute Maximum Contaminant Level for total coliform-positive repeat samples following a fecal coliform-positive sample in October 2003; 30 TAC §290.109(c)(2)(F), by failing to collect five routine samples following coliform-positive samples in the months of July and November 2003; 30 TAC §290.109(c)(2)(A)(i), and THSC, §341.033(d), by failing to perform routine bacteriological monitoring during the months of January, February, and May 2004; April, July - October, and December 2005, and January and February 2006; 30 TAC §290.122(c)(2)(B), by failing to provide public notices of the failure to perform routine bacteriological monitoring during the months of May 2004; April, September, and October 2005; and February 2006; 30 TAC §290.109(f)(3), and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total coliform bacteria in March 2004; 30 TAC §290.122(b)(2)(B), by failing to provide public notice for exceeding the MCL in March 2004; and 30 TAC §290.109(c)(3)(A)(ii), by failing to collect and submit four repeat samples following a total coliform positive sample found in March 2004; PENALTY: \$8,798; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Amarillo Village Cleaners, Inc.; DOCKET NUMBER: 2006-0694-DCL-E; TCEQ ID NUMBER: RN103962221; LOCATION: 2601 Wolflin Avenue, Amarillo, Potter County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,067; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Arthur Witherspoon dba Nick's Conoco; DOCKET NUMBER: 2005-0285-PST-E; TCEQ ID NUMBER: RN101725059; LOCATION: 5010 Rittiman Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum under-

ground storage tanks (USTs); PENALTY: \$2,850; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Birdsong Fuels & Services, L.L.C.; DOCKET NUMBER: 2005-1524-PST-E; TCEQ ID NUMBER: RN101813616; LOCATION: 860 Interstate Highway 10 South, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a) and Texas Water Code (TWC), §5.702, by failing to pay outstanding UST fees for TCEQ Account Number 0047647U for Fiscal Year 2005; PENALTY: \$2,800; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Brazos Bend Home & Ranch, Inc.; DOCKET NUMBER: 2005-2085-PWS-E; TCEQ ID NUMBER: RN101176592; LOCATION: 22930 Farm-to-Market Road 1426, Fort Bend County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis, and by failing to post a public notification for the months of September and November 2003; March, July, and December 2004; and April and June 2005; and 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect and submit the appropriate number of additional routine water samples taken in September and October 2004 following months in which the water system had a total coliform-positive sample results, and by failing to post a public notice of the failure to collect all required samples; PENALTY: \$3,823; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Daniel Lopez and Mariciela Carrillo a/k/a Marisela Lopez; DOCKET NUMBER: 2005-1934-MSW-E; TCEQ ID NUMBERS: RN104567508; LOCATION: Mile 4 Road and Mile 14 and 1/2 Road, Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.5 and §328.60(a), and THSC, §361.112(a), by failing to prevent the disposal of municipal solid waste and the storage of more than 500 scrap tires on-site; PENALTY: \$5,250; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2005-1906-AIR-E; TCEQ ID NUMBER: RN102450756; LOCATION: 1795 Burt Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and THSC, §382.085(b), by allowing unauthorized emission of air contaminants; PENALTY: \$10,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Imran Investments, Inc. dba Mainland Texaco; DOCKET NUMBER: 2004-1114-PST-E; TCEQ ID NUMBERS: 23164 and RN103150868; LOCATION: 5202 Farm-to-Market Road 1765, Texas City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED:

30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by an accidental release arising from the operation of petroleum USTs; PENALTY: \$3,200; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: John Tamez dba Plastics International North; DOCKET NUMBER: 2005-1274-MSW-E; TCEQ ID NUMBER: RN102854478; LOCATION: 7771 Kiely Road, Canutillo, El Paso County, Texas; TYPE OF FACILITY: plastics grinding and recycling facility; RULES VIOLATED: 30 TAC §327.3(b), by failing to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill had occurred; 30 TAC §330.15(a)(3), by failing to store solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare or the environment; 30 TAC §330.209(a), by failing to store all solid waste in a manner so as to prevent a fire, safety, or health hazard; 30 TAC §327.5(a) and TWC, §26.266(a), by failing to immediately abate and contain a spill or discharge and cooperate fully with the executive director and the local incident command system; PENALTY: \$21,000; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(10) COMPANY: Jubilant Services, Inc. dba RJN Food Mart; DOCKET NUMBER: 2005-1849-PST-E; TCEQ ID NUMBER: RN101565778; LOCATION: 2101 Martin Drive, Bedford, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §115.246(7)(A), and THSC, §382.085(b), by failing to maintain Stage II records on-site at the site during business hours; 30 TAC §115.242(3)(K), and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects; and 30 TAC §115.245(2), and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$9,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Mickey Koonsman dba Tex Hess 3 Way Store and Karen Koonsman dba Tex Hess 3 Way Store; DOCKET NUMBER: 2005-0809-PST-E; TCEQ ID NUMBER: RN102719390; LOCATION: 21039 United States Highway 67, Stephenville, Erath County, Texas; TYPE OF FACILITY: feed store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system within three to six months after installation and at least once every three years; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; 30 TAC §334.8(c)(5)(B)(ii), by failing to ensure that the delivery certificate was renewed by timely and proper submission of a new

UST registration and self-certification form to the agency; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into a UST; PENALTY: \$6,840; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: P & S Stone, Inc. dba P & S Stone TD Williams; DOCKET NUMBER: 2004-0937-WQ-E; TCEQ ID NUMBERS: TXR15M004 and RN104285291; LOCATION: 11389 United States Highway 281 North, Jacksboro, Jack County, Texas; TYPE OF FACILITY: rock quarry and rock crusher; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to waters in the state through an individual permit or the Multi-Sector General Permit; PENALTY: \$6,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Ricardo Ortega dba Ortega's Trees and Landscaping; DOCKET NUMBER: 2003-0543-LII-E; TCEQ ID NUMBER: RN103126249; LOCATION: 509 West Interstate Highway 10, Sequin, Guadalupe County, Texas; TYPE OF FACILITY: landscape irrigation system; RULES VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a); Texas Occupations Code, §1903.251, and TWC, §37.003, by failing to obtain a license issued by the commission to sell or install an irrigation system at the site on or before December 3, 2001; PENALTY: \$250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Salwa, Inc. dba Cypress Plaza 1; DOCKET NUMBER: 2002-1013-PST-E; TCEQ ID NUMBER: RN101895308; LOCATION: 6420 North 16th Street, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(5)(B)(i), and TWC, §26.346(a), by failing to renew the registration self-certification form when the delivery certificate expired on January 31, 2002, and by failing to submit an amended registration noting that the facility was temporarily out of service from October 31, 2001 - May 3, 2002; 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that the delivery certificate was posted at the facility and was visible at all times; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide proper release detection for the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detector at least once a year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.8(c)(5)(C), by failing to physically label all tank fill pipes according to the registration selfcertification form; and 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to conduct regular inspections of an impressed current cathodic protection system at least every 60 days; PENALTY: \$14,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: South Texas Chlorine, Inc.; DOCKET NUMBER: 2004-0142-MLM-E; TCEQ ID NUMBERS: CD-0085-I and RN100943044; LOCATION: 8600 East Harrison, Harlingen, Cameron County, Texas; TYPE OF FACILITY: chemical repackaging plant; RULES VIOLATED: 30 TAC §116.115(c); THSC, §382.085(b); New Source Review (NSR) Permit Number 21286, Special Condition Number 8, by failing to properly monitor the concentration of the scrubbing solution at least once per shift as required by the permit; 30 TAC §116.115(c), THSC, §382.085(b), NSR Permit Number 21286, Special Condition Number 25, by failing to maintain the maximum allowed bleach production limit of 120 batches per year; 30 TAC §116.115(c); THSC, §382.085(b); and NSR Permit Number 21286, Special Condition Numbers 26(A), (D), (F), (G), and (H), by failing to meet the following record keeping requirements: 1) records of the railcar unloading operations; and 2) records of the results of the required fugitive monitoring and maintenance program; 30 TAC §281.25(a)(4), and §335.4, Multi Sector General Permit (MSGP) Number TXR05H669, Part III, Section A(3)(a) and (b), and TWC, §26.121, by failing to identify and obtain a permit for non-storm water discharge; 30 TAC §281.25(a)(4), and MSGP Number TXR05H669, Part III, Section A(4)(a), (b) and (c), by failing to include the following items in the Storm Water Prevention Plan (SWP3): 1) the inventory of exposed materials; 2) narrative description of all activities that could contribute pollutants to the storm water; and 3) two outfall locations on the site map; 30 TAC §281.25(a)(4), and MSGP Number TXR05H669, Part III, Section A(5)(b), (f), and (h), by failing to include a detailed description in the SWP3 of the following: 1) spill prevention and response measures where spills could contribute pollutants to storm water discharges; 2) an established training program for all employees responsible for implementing or maintaining the activities of the SWP3; and 3) a method to record the required information for the quarterly visual monitoring; and 30 TAC §335.62 and 40 CFR §262.11, by failing to complete a hazardous waste determination of the two water waste streams generated as result of the washing of compressed gas cylinders and the one-ton containers in the scrubber tanks; PENALTY: \$5,100; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2005-1801-MWD-E; TCEQ ID NUMBER: RN102469988; LOCATION: 3523 Highway 134, La Porte, Harris County, Texas; TYPE OF FACILITY: waste water treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04317, Effluent Limitations and Monitoring Requirements Number 1, and TWC, §26.121(a), by failing to comply with permitted effluent discharge limitations; PENALTY: \$6,080; Supplemental Environmental Project (SEP) offset amount of \$6,080. The Respondent shall perform reforestation by planting 25.0 acres with 6,291 trees consisting of Loblolly Pine, Sweet Gum, Green Ash, Overcup Oak, Willow Oak, Pecan, Black Gum, Bald Cypress, and Coastal Live Oak trees at a density of approximately 250 trees per acre. Planted trees must be a minimum of approximately three feet in height, spaced 12 feet apart, and be protected from herbivores using tree guards. The Respondent shall remove undesirable exotics such as the Chinese Tallow tree. The Respondent shall use SEP funds to pay for new trees and the removal of undesirables. The Respondent shall perform this project within approximately 25 acres of land located along the banks San Jacinto River at the San Jacinto Battleground State Park. This park is owned by the State of Texas. It has been designated as a State Historic Site, a National Historic Landmark and has been dedicated to the public use. STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL



OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: William R. Leo dba Leo's Food Mart 3; DOCKET NUMBER: 2004-1336-PST-E; TCEQ ID NUMBERS: 55005 and RN102283652; LOCATION: Tom Gill Road, Penitas, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of petroleum products; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two petroleum USTs; PENALTY: \$2,100; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200606096

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Notice of Public Hearing on Proposed El Paso Natural Events Action Plan (NEAP)

The Texas Commission on Environmental Quality (commission or TCEQ) will conduct a public hearing in El Paso on December 11, 2006, to receive comments concerning the Natural Events Action Plan (NEAP) for the El Paso area, under the requirements of the United States Environmental Protection Agency (EPA) Natural Events Policy (NEP), May 30, 1996. The proposed plan will be submitted to EPA for review and comment.

The commission proposes the El Paso NEAP to protect public health and help manage the exceedances of the particulate matter (PM) standards that can be attributed to uncontrollable natural events such as unusually high winds. The TCEQ's analysis of wind data and other information regarding conditions during the exceedances indicate that the major causes are usually high winds that result in dust storms. Based on EPA guidance the El Paso NEAP pertains to both PM<sub>10</sub> and PM<sub>2.5</sub>.

In the proposed plan TCEQ commits to document and analyze recent and future natural events. The NEAP plan includes local public outreach and education programs to minimize public exposure to future natural events and Best Available Control Measures (BACM) for man-made sources of windblown dust for local implementation. The TCEQ also commits to periodically reevaluate the effectiveness of the NEAP.

A public hearing on this proposal will be held in El Paso, Texas, on December 11, 2006, at 1:30 p.m., at the TCEQ El Paso Regional Office, 401 E. Franklin Ave., Suite 560, El Paso, Texas 79901-1206. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Air Quality Division at (512) 239-4900. Requests should be made as far in advance as possible.

Written comments may be submitted to Ita Ufot, MC 206, Air Quality Division, Chief Engineer's Office, Texas Commission on Environ-

mental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-5687. All comments pertaining to the El Paso NEAP should reference Project Number 2006-040-OTH-NR. The comment period closes at 5:00 p.m. on December 18, 2006. Copies of the proposed NEAP can be obtained from the commission's Web site at <http://www.tceq.state.tx.us/implementation/air/sip/elp.html>. For further information, please contact Ita Ufot, Air Quality Planning Section, (512) 239-1935.

TRD-200606090

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 7, 2006



#### Notice of Water Quality Applications

The following notices were issued during the period of November 2, 2006.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

CITY OF ANGUS has applied for a renewal of TPDES Permit No. 11864-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located adjacent to Interstate Highway 45 approximately 2,000 feet north of its intersection with Farm-to-Market Road 739 in the north central portion of the City of Angus in Navarro County, Texas.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 14234-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility will be located 1,600 feet northeast of the intersection of Farm-to-Market Road 1385 and Crutchfield Road in Denton County, Texas.

THE CITY OF AZLE has applied for a major amendment to TCEQ Permit No. 11183-003 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 941,000 gallons per day to an annual average flow not to exceed 1,443,000 gallons per day. The facility is located between State Highway 199 (Jacksboro Highway) and Old Ten Mile-Azle Road west of Eagle Mountain Lake on Ash Creek in Tarrant County, Texas.

CITGO PRODUCTS PIPELINE COMPANY which operates the Arlington Pumping Station, a pipeline breakout tankage facility (i.e., petroleum pipeline pumping station with interim storage), has applied for a renewal of TPDES Permit No. WQ0003993000, which authorizes the discharge of remediated groundwater, storm water, and hydrostatic test water on an intermittent and flow variable basis via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 3301 State Highway 157, northwest of the intersection of State Highway 157 and Mosier Valley Road, in the City of Euless, Tarrant County, Texas.

CITY OF DAISSETTA has applied for a renewal of TPDES Permit No. 10736-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,000 feet east of Farm-to-Market Road 834, at a point approximately 1,500 feet north of the City of Daisetta in Liberty County, Texas.

CITY OF DALLAS has applied for a renewal of TPDES Permit No. 10060-097, which authorizes the discharge of filter backwash effluent from a water treatment plant at an annual average flow not to exceed 15,000,000 gallons per day. The facility is located at 2605 Shorecrest Drive at Denton Drive and the sludge lagoons and lagoon discharge is located in the 9300 block of Harry Hines Boulevard, one half mile south of Interstate Highway I-35 in the City of Dallas in Dallas County, Texas.

GOLDEN TRIANGLE ESTATES HOMEOWNERS' ASSOCIATION, INC. has applied for a renewal of TPDES Permit No. 12807-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 2 miles west of State Highway 377 and the City of Keller and 0.5 mile south of Hicks Road in Tarrant County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5 has applied for a renewal of TPDES Permit No. WQ0011238002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 11538 Trickey Road near the intersection of Trickey Road and Harris County Flood Control Ditch No. P147-00-00 and approximately 1,600 feet north of Gears Road, and 1.5 miles west of Interstate Highway 45, north of the City of Houston in Harris County, Texas.

HOUSTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10871-001, which authorizes the discharge of treated filter backwash effluent at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately one mile southwest of Latexo, approximately 1 and 3/4 miles northwest of the intersection of U.S. Highway 287 and Farm-to-Market Road 2160 in Houston County, Texas.

CITY OF JOSEPHINE has applied for a renewal of TPDES Permit No. 10887-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located approximately 0.2 mile north and 0.7 mile east of the intersection of Farm-to-Market Road 6 and Farm-to-Market Road 1777 in Collin County, Texas.

L.O.B. LIMITED PARTNERSHIP has applied for an amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014514001 to authorize a change in the location of the outfall. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. The facility will be located approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend County, Texas.

CITY OF LEONARD has applied for a renewal of TPDES Permit No. 10920-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 300 feet west of the intersection of U.S. Highway 69 and the Missouri, Kansas and Texas Railroad, southeast of the City of Leonard in Fannin County, Texas.

CITY OF LOVELADY has applied for a renewal of TPDES Permit No. 10734-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 0.5 mile southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280 in Houston County, Texas.

MARTIN REALTY & LAND, INC. has applied for a renewal of TPDES Permit No. WQ0014081001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to ex-

ceed 450,000 gallons per day. The facility is located approximately 1.2 miles east-northeast of the intersection of Portland Road and Farm-to-Market Road 1314 and 2.5 miles northwest of the intersection of Farm-to-Market Road 1314 and U.S. Highway 59 in Montgomery County, Texas.

CITY OF OVERTON has applied for a renewal of TPDES Permit No. 10242-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 2,900 feet east of the intersection of Henderson Street and Linda Lane in Rusk County, Texas.

SOUTHERN UTILITIES COMPANY has applied for a renewal of TPDES Permit No. 14079-001, which authorizes the discharge of filter backwash effluent at a daily average flow not to exceed 14,400 gallons per day. The facility is located on Farm-to-Market Road 346, approximately 2.8 miles south of the intersection of Farm-to-Market Road 346 and Farm-to-Market Road 344 in Cherokee County, Texas.

SOUTHERN UTILITIES COMPANY has applied for a renewal of TPDES Permit No. 14080-001, which authorizes the discharge of treated filter backwash effluent at a daily average flow not to exceed 6,000 gallons per day. The facility is located at County Road 178, approximately 1/10 of a mile south of the intersection of County Road 178 and Farm-to-Market Road 2868 in Smith County, Texas.

STONE HEDGE UTILITY CO. Inc. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014709001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The domestic wastewater treatment facility is located approximately 6,100 feet northeast of the intersection of State Highway 105 and State Highway 336 in Montgomery County, Texas.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. 10348-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located on Outlook Drive, 1.5 miles north of the intersection of Highway 67 and Highway 287 in Ellis County, Texas.

TRINITY RIVER AUTHORITY OF TEXAS has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 11310-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 0.3 mile from Farm-to-Market Road 224 at a point approximately 2.7 miles southeast of the intersection of State Highway 156 and Farm-to-Market Road 224 in San Jacinto County, Texas.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a major amendment to TPDES Permit No. WQ0013415001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,500,000 gallons per day to an annual average flow not to exceed 6,000,000 gallons per day. The facility is located on Bell Chapel Road on the north side of Red Oak Creek, approximately two miles east of Interstate Highway 35 East and two miles south of the City of Red Oak in Ellis County, Texas.

WATERWOOD MUNICIPAL UTILITY DISTRICT NO. 1 has applied to for a renewal of TPDES Permit No. 11447-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 0.1 mile south of Waterwood Parkway at a point approximately 1.0 mile east of the intersection of Waterwood Parkway and Farm-to-Market Road 980 and approximately 6 miles north of the intersection of Farm-to-Market Road 980 and State Highway 190 in San Jacinto County, Texas.

## INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200606111

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 8, 2006



### Notice of Water Rights Application

Notices issued November 2, 2006, through November 7, 2006

APPLICATION NO. 5703A; TXU Mining Company LP, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, Applicant, has applied for an amendment to Water Use Permit No. 5703 to add the use of the bed and banks of an unnamed tributary of Dry Creek and Dry Creek and an unnamed tributary of Prospect Branch and Prospect Branch, Sabine River Basin to convey water to maintain the level of Martin Lake. The application and fees were received on May 23, 2006, and additional information was received on July 24 and August 15, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 11, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by December 4, 2006.

APPLICATION NO. 5931; TXU Mining Company LP, 1601 Bryan Street, Dallas, Texas 75201-3411, applicant, has applied for a Water Use Permit to divert and use not to exceed 1,000 acre-feet of water per year at or upstream of five (5) diversion points located on unnamed tributaries of Willow Creek, Heads Creek, and unnamed tributaries of Steele Creek, in the Brazos River Basin, and to construct and maintain five (5) reservoirs for mining purposes within the Willow/Heads Creek Watershed in the Kosse Lignite Mining Area (LMA) in Limestone and Robertson Counties, Texas. The application was received on December 9, 2005. Additional information and fees were received on March 1, June 1, August 7, September 7, and September 8, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 14, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 08-2319A; The City of Saint Jo, P.O. Box 186, Saint Jo, Texas 76265, Applicant or Owner, has applied for an amendment to Certificate of Adjudication No. 08-2319 to add eight (8) additional diversion points, and to add mining and industrial purposes to the authorized water and four (4) exempt reservoirs pursuant to TWC §11.143. The diversion points and reservoirs are located on unnamed tributaries of Clear Creek; Deep Branch; and a tributary of Elm Fork Trinity River, Trinity River Basin, in Montague and Cooke County. The application was received on January 26, 2006. Additional information and fees were received on January 27, March 24, April 3, May 30, and June 22, 2006. The application was declared administratively

complete and accepted for filing on July 21, 2006. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by December 11, 2006.

## INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200606110

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 8, 2006



## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

#### **Deadline: Monthly MPAC Report Due June 6, 2005**

Emily Nance, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

#### **Deadline: Monthly MPAC Report Due July 5, 2005**

Emily Nance, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

#### **Deadline: Monthly MPAC Report Due August 5, 2005**

Emily Nance, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly MPAC Report Due September 6, 2005**

Emily Nance, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly MPAC Report Due December 5, 2005**

Alyce Rowland, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly MPAC Report Due January 5, 2006**

Alyce Rowland, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Semiannual JC/OH Report Due January 17, 2006**

Joe G. Farias, 211 Shrine Ave., San Antonio, Texas 78221-1630

**Deadline: Monthly MPAC Report Due February 6, 2006**

Alyce Rowland, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: 8-Day Pre-Election Report Due February 27, 2006**

Andrew G. Khoury, P.O. Box 1151, Longview, Texas 75606-1151

**Deadline: Monthly MPAC Report Due March 6, 2006**

Alyce Rowland, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly PAC Report Due April 5, 2006**

Alyce Rowland, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly MPAC Report Due May 5, 2006**

Linda Bowles, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: 30-Day Pre-convention Report Due May 10, 2006**

Charles E. Soechting, 400 W. Hopkins, Ste. 204, San Marcos, Texas 78666

**Deadline: 8-Day Pre-convention Report Due June 1, 2006**

Charles E. Soechting, 400 W. Hopkins, Ste. 204, San Marcos, Texas 78666

**Deadline: Monthly MPAC Report Due June 5, 2006**

Linda Bowles, 3DI, Inc. PAC, 1900 W. Loop South, Suite 400, Houston, Texas 77027-3247

**Deadline: Monthly MPAC Report Due July 5, 2006**

Robert B. Aguirre, All Children Matter, Texas, c/o James Evans, Attorney at Law, 1504 San Antonio, Ste. 200, Austin, Texas 78701

**Deadline: Semiannual GPAC/SPAC Report Due July 17, 2006**

James W. Blair, Lancaster Police Officer's Association, 1501 N. Dallas Ave., Lancaster, Texas 75134

Charles M. Miles, Black Voter Action Project, 7204 Marywood Circle, Austin, Texas 78723-1529

Morris W. Petty, Jr., Public Workers for a Better Workplace, 209A E. Main St., Grand Prairie, Texas 75050

Alice Kathryn Polo, El Paso Federation of Teachers & Support Personnel COPE, 4024 Trowbridge, El Paso, Texas 79903

Glenna Taite, Westlake Republican Special Campaign Fund, 1555 Waterside Ct., Dallas, Texas 75218

**Deadline: Semiannual JC/OH Report Due July 17, 2006**

David S. Barron, P.O. Box 2263, Bryan, Texas 77806-2263

Frederick W. Burns, P.O. Box 515033, Dallas, Texas 75251-5033

Alex Castano, 110 Wild Basin Rd., Ste. 270A, West Lake Hills, Texas 78746

Cedric W. Davis, Sr., P.O. Box 41695, Dallas, Texas 75241-0695

Steve P. Franklin, 3700 McCann Rd. Apt 109, Longview, Texas 75605-1701

Guillermo Gandara, Jr., 10736 Thunder Rd., El Paso, Texas 79927-4817

Heath G. Harris, 4144 N. Central Expy, Ste. 650, Dallas, Texas 75204-3255

William E. Harrison, 2607 Kimberly Dawn Dr., Conroe, Texas 77304-5018

Bruce A. Hoffer, 2372 Calder St., Beaumont, Texas 77702-2015

Richard W. King, 428 Fulton Ave., Apt. 1, San Antonio, Texas 78212-2277

Star Locke, 4929 Cain Dr., Corpus Christi, Texas 78411-4720

John Lujan III, 3280 Owenwood Dr., San Antonio, Texas 78264-4720

Jerry A. Madden, 520 Central Parkway East, Suite 106, Plano, Texas 78074-5526

Alfredo Montano, Jr., 1101 W. Tyler Ave., Harlingen, Texas 78550-6162

Jose R. Ochoa, 3111 Homer Dr., Laredo, Texas 78041-1936

Bruce Priddy, 15851 Dallas Pkwy, Ste. 500, Addison, Texas 75001-6016

Barbara M. Samuelson, P.O. Box 200700, Austin, Texas 78720-0700

**Deadline: Lobby Activities Report due January 10, 2006**

Sam Russell, 815 Brazos, Ste. 901, Austin, Texas 78701

**Deadline: Lobby Activities Report due May 10, 2006**

James Andrew Campbell, P.O. Box 1028, Austin, Texas 78767-1028

**Deadline: Lobby Activities Report due June 12, 2006**

Donze Lopez, P.O. Box 12569, San Antonio, Texas 78212

**Deadline: Lobby Activities Report due July 10, 2006**

Martha E. Smiley, Grande Communications, 401 Carlson Circle, San Marcos, Texas 78666-6730

**Deadline: Lobby Activities Report due August 10, 2006**

Martin V. Fleming II, 15601 N. Dallas Pkwy, Ste. 900, Addison, Texas 75001

**Deadline: Personal Financial Statement due February 13, 2006**

Andrew G. Khoury, P.O. Box 1151, Longview, Texas 75606-1151

Oscar J. Palma, Jr., 8218 Teakwood Forest Dr., Spring, Texas 77379

**Deadline: Personal Financial Statement due May 1, 2006**

W. C. Abernathy, Jr., P.O. Box 579, Archer City, Texas 76351-0579

Ana C. Bergh, 3211 Lake Shore Dr., Edinburg, Texas 78539-7744

## Deadline: Personal Financial Statement due June 30, 2006

Marcellus A. Taylor, 837 Winchester Dr., Lewisville, Texas 75056-5556

TRD-200606045

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: November 2, 2006



## Department of Family and Protective Services

### Correction of Error

The Texas Department of Family and Protective Services submitted a proposed amendment to 40 TAC §700.1713 which appeared in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9279). Due to a Texas Register error on page 9280, first column, the published version is missing subsections (i) - (m).

The omitted language should read as follows:

(i) Client eligibility [and referral].

[(4) Client Eligibility:] Purchased family-based safety [family-preservation] services can be provided to any family that qualifies [for family preservation services or intensive family-preservation services] under the definitions and criteria specified in §700.701 of this title (relating to Services to Families) and §700.702 of this title (relating to Family-Based Safety Services) [§§700.701(a)-(b); 700.702, and 700.703 of this title (relating to Services to Families; Family Preservation Services; and Intensive Family-Preservation Services)].

[(2) Making a referral. To refer a family to a contractor for family preservation services, the family's worker:]

[(A) completes a referral form specified by TDPRS to certify the family's eligibility and authorize services; and]

[(B) arranges to have the family's investigation or case record, and any other appropriate information, duplicated and given to the contractor along with the referral form.]

[(3) Initial time frames. The worker must specify a time frame for the services authorized on the referral form specified in paragraph (2)(A) of this subsection. The possibilities are limited as follows:]

[Figure: 40 TAC §700.1713(i)(3)]

[(4) Accepting the referral and initiating services.]

[(A) As specified in subsection (h) of this section, on receipt of the completed referral form and accompanying case record specified in paragraph (2) of this subsection, the contractor must assign the case to a worker and a supervisor. The worker must attempt to establish face-to-face contact with the family within:]

[(i) 72 hours in a basic-services case; or]

[(ii) 48 hours in an intensive-services case.]

[(B) If the family refuses to accept the contractor's services when the worker contacts the family, the contractor must send written notice of the refusal to the PSFC program liaison specified in subsection (j) of this section.]

[(j) The PSFC program liaison. The regional director for families and children in every region must assign a PSFC program liaison to each family-preservation-services contractor. The contractor must cooperate with the assigned program liaison in the manner specified by PSFC. The program liaison's general responsibilities include:]

[(1) conferring with the contractor about casework and operational problems that require the mutual attention of the contractor and PSFC; and]

[(2) monitoring the contractor's contract operations and casework.]

[(k) Returning open cases to PSFC.]

[(1) When an open case may be returned. A contractor for casework services must confer with the PSFC program liaison and consider returning a case to PSFC if:]

[(A) a new incident of child abuse or neglect occurs (Note: The contractor must report the new incident to PSFC within 24 hours after learning of it);]

[(B) the family can no longer ensure a child's safety; or]

[(C) the family has demonstrated an unwillingness to cooperate with the contractor, and a child remains at risk of abuse or neglect.]

[(2) Reopening the case for PSFC services.]

[(A) When the contractor and the PSFC program liaison decide to return a family's case to PSFC, the contractor gives PSFC a current copy of the case record, and PSFC reopens the case for PSFC services.]

[(B) In reopening the case, PSFC assumes responsibility for providing any additional family preservation services that the family needs. When appropriate, however, the contractor may continue providing other types of purchased services to the family (examples: homemaker services, child-care training).]

(j) [(4) Closing cases. All case closures

[(4) Contractors] for family-based safety [family preservation] services must be based on case closure criteria in §700.706 of this title (relating to Case Closure of Family-Based Safety Services Cases). [close cases without PSFC approval based on the criteria for case closure in:]

[(A) §700.702(e) of this title (relating to Family Preservation Services); and]

[(B) §700.703(d) of this title (relating to Intensive Family-Preservation Services).]

[(2) Whenever a contractor closes a family's case, the worker assigned to the case must:]

[(A) meet with the family and discuss issues related to the withdrawal of PSFC's services as specified in PSFC's policies and procedures for closing family-preservation-services cases;]

[(B) notify the PSFC program liaison that the case is being closed; and]

[(C) send the PSFC liaison a complete copy of the family's case record.]

[(m) The plan of operation for purchased family-preservation services. In addition to including the elements specified in §700.1705(b) of this title (relating to Contract Documentation), the plan of operation in contracts for family preservation services must:]

[(1) stipulate that the contractor will comply with PSFC's policies for family-preservation-services casework;]

[(2) stipulate that the contractor's workers and supervisors will meet the minimum qualifications and receive the basic job training specified in subsection (h) of this section;]

[(3) require the contractor to have workers available to respond to crises 24 hours a day, seven days a week;]

[(4) require the contractor and the PSFC program liaison to maintain regular contact;]

[(5) stipulate that the contractor will:]

[(A) comply with PSFC's policies for maintaining and disposing of case records;]

[(B) give the contract manager a copy of the contractor's written procedures for maintaining and disposing of case records; and]

[(6) require the contractor to submit program and financial reports in formats acceptable to TDPRS.]

TRD-200606129

## General Land Office

### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Aransas County, Art.33.136 Sketch No. 5, submitted by Jerry L. Brundrett, Jr., a Licensed State Land Surveyor, conducted in June 2005, locating the following shoreline boundary:

A survey of a portion of the MHW Line of Copano Bay along Newcomb Point on Lamar Peninsula

For a copy of this survey contact Archives & Records, Texas General Land Office at (512) 463-5277.

TRD-200606109

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: November 8, 2006

## Texas Health and Human Services Commission

### Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Proposal. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per day payment rates for the state-owned veterans nursing facilities for state fiscal year (SFY) 2007 effective September 1, 2006: Big Spring, \$133.00; Bonham, \$133.00; Floresville, \$133.00; Temple, \$133.00; McAllen, \$133.00 and El Paso, \$133.00.

HHSC conducted a public hearing to receive public comment on the proposed payment rates for state-owned veterans homes in the nursing facility program operated by the Texas Department of Aging and Disability Services. The hearing was held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on October 19, 2006, at 10:00 a.m. in the Permian Basin Conference Room of Building H, Braker Center, at 11209 Metric Blvd., Austin, Texas 78758-4021.

Methodology and justification. The adopted rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311.

TRD-200606116

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 8, 2006

### Notice of Hearing on Proposed Medicaid Hospice Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 8, 2006, to receive public comment on proposed Medicaid payment rates for Hospice routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid Hospice program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective October 1, 2006.

The public hearing will be held on December 8, 2006, at 9:00 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Irene Cantu, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200, telephone number (512) 491-1358, by December 4, 2006, so that appropriate arrangements can be made.

Written comments. Written comments regarding payment rates may be submitted in lieu of testimony or in addition to oral comments presented at the public hearing and must be received by 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Ms. Cantu, HHSC Rate Analysis, MC H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu at (512) 491-1998.

Briefing package. Briefing packages about the proposed payment rates will be available at the hearing. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Irene Cantu, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200, telephone number (512) 491-1358.

Methodology and justification. The proposed rates were adjusted in accordance with the Code of Federal Regulations at 42 CFR 418.306(c). This federal regulation requires hospice rates to be adjusted annually by a wage index that is published annually in the Federal Register. The "Hospice Wage Index for Fiscal Year 2007," which specifies the adjusted hospice rates for federal fiscal year 2007, was published in the *Federal Register* on September 1, 2006, at 71 Fed. Reg. 52080 - 52123. The federal fiscal year 2007 hospice rate adjustments are effective from October 1, 2006, through September 30, 2007.

TRD-200606119

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 8, 2006

### Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comment on the proposed payment rates for the following Medicaid procedure codes: 1-99291; 1-99292; 1-99293; 1-99294; 1-99295; 1-99296; 1-99298; 1-99299; 1-90649; 61/T-G0338; T-G0339; T-G0340; 5-S3820; 5-S3822; 5-S3823; 1-C9224; 1-95115; 1-95117; 1-J9027; and 1-C9225.

The proposed rates for physicians are:

Visits-Hospital-Critical Care & Newborn Services:

1-99291: 5.48 RVUs X \$27.276 = \$149.47 [RVUs = Relative Value Units]

1-99292: 2.75 RVUs X \$27.276 = \$75.01

1-99293: 21.86 RVUs X \$27.276 = \$596.25

1-99294: 10.85 RVUs X \$27.276 = \$295.94

1-99295: 25.01 RVUs X \$27.276 = \$682.17

1-99296: 10.86 RVUs X \$27.276 = \$296.22

1-99298: no change = \$125.00 Access-Based Fee (ABF)

1-99299: change to = \$100.00 ABF

Human Papillomavirus (HPV) Vaccine:

1-90649: = \$128.88/per dose

Radiation Therapy - Radiosurgery:

6-G0338 = \$1,015.00

I-G0338 = \$375.55

T-G0338 = \$639.45

T-G0339 = \$3,675.00

T-G0340 = \$2,625.00

BRCA Studies & Prognostic Breast and Gynecological Studies:

5-S3820 = \$1,785.00

5-S3822 = \$210.00

5-S3823 = \$249.00

Injections - Galsulfase:

1-C9224 = \$1,516.12/per 5 mg

Allergy-Vials or Extracts:

1-95115: 0.41 RVUs X \$27.276 = \$11.18

1-95117: 0.52 RVUs X \$27.276 = \$14.18

Injections - Clofarabine:

1-J9027 = \$116.62/per 1 mg

Fluocinolone Intravitreal Implant:

1-C9225 = \$19,345.00/per 0.59 mg

The effective date of the proposed payment rates is February 1, 2007. The proposed changes to the payment rates result from changes to Medicaid medical policy.

The hearing will be held in compliance with Title 1 of Texas Administrative Code (TAC) §355.201(e) - (f) and Chapter 32 of the Human Resources Code §32.0282, which require public notice and hearings on proposed changes to payment rates for certain medical assistance programs.

The public hearing will be held on December 6, 2006, at 1:30 p.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the main entrance.

Written comments regarding the proposed payment rate may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to irene.cantu@hhsc.state.tx.us. Ex-

press mail can be sent, or written comments can be hand delivered, to Ms. Cantu, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu at (512) 491-1998.

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Cantu at (512) 491-1358 or at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Cantu by December 4, 2006, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the reimbursement methodology for physician services under Purchased Health Services at 1 TAC Chapter 355, Subchapter J, §355.8085 (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners), for laboratory services at 1 TAC §355.8610, and for radiation therapy services 1 TAC §355.8081 and 1 TAC §355.8085. Medicaid fees for physician-administered drugs/biologicals are access-based fees under 1 TAC §355.8085, with the fee guidelines published on Page 23 of the November/December 2006 Texas Medicaid Bulletin, No. 199.

TRD-200606122

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 8, 2006



Notice of Intent to Renew Consultant Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) furnishes this notice of intent to renew a consultant contract.

HHSC entered into the original contract, HHSC Contract 529-05-0255, executed November 18, 2005, with Abdeladim and Associates for consulting services for project management assistance to the Texas Department of Family and Protective Services Renewal Project. HHSC intends to extend this consulting contract for up to twelve additional months, for no more than \$768,000 for the additional term, unless it receives a better offer for the required services. The original RFP for this contract was released July 8, 2005 and can be found at: [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/contracts.asp](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/contracts.asp). The RFP number is 529-05-0255. Consultants wishing to submit competing offers must submit proposals in accordance with the requirements of the RFP to the contact identified below by the deadline set forth below.

Competing offers must be sent to Paul Grubb, Contract Manager, Texas Health and Human Services Commission, 4900 North Lamar Boulevard, Austin, TX 78751. To be considered, all competing offers must be received at the foregoing address on or before 4:00 p.m. Central Time on December 8, 2006. Offers received after this time and date will not be considered. Any offers received will be evaluated on the basis of demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. Exercise of this option to extend is contingent upon receipt of a finding of fact from the Governor's Office of Budget and Planning that the requested consulting services are necessary. All questions regarding this notice must be sent in writing to Mr. Grubb at the address stated above, or by

e-mail to paul.grubb@hhsc.state.tx.us by 4:00 p.m. Central Time on November 29, 2006.

TRD-200606127

David Brown

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 8, 2006

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**Department of State Health Services**  
Licensing Actions for Radioactive Materials



The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	North Cypress Medical Center Operating Co DBA North Cypress Medical Center	L03020	Houston	00	10/26/06
Pampa	American Diagnostic Medical Corp	L06033	Pampa	00	10/25/06
Webster	Harvey E Slusky MD PA DBA Clear Lake Heart Center	L06031	Webster	00	10/27/06
Throughout Tx	Thrubit LLC	L06030	Houston	00	10/24/06

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Cardiology Consultants PA	L04315	Abilene	29	10/19/06
Abilene	Abilene Imaging Center LLC	L05687	Abilene	04	10/30/06
Abilene	Smith Pipe of Abilene	L04992	Abilene	03	10/27/06
Amarillo	Panhandle Nuclear RX LTD	L04683	Amarillo	20	10/30/06
Angleton	Isotherapeutics Group LLC	L05969	Angleton	01	10/23/06
Arlington	GE Healthcare	L05693	Arlington	04	1/18/06
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	78	10/18/06
Austin	Ambion Inc	L04307	Austin	16	10/24/06
Austin	Austin Diagnostic Clinic	L05646	Austin	06	10/31/06
Austin	Austin Heart PA	L04623	Austin	38	10/20/06
Austin	Austin Texas Radiation Oncology Group PA DBA Austin Cancer Centers	L01761	Austin	53	10/19/06
Austin	Austin Texas Radiation Oncology Group PA DBA Austin Cancer Centers	L01761	Austin	54	10/26/06
Austin	Columbia St David's Healthcare System LP DBA South Austin Hospital	L03273	Austin	67	10/24/06
Austin	Columbia St David's Healthcare System LP DBA South Austin Hospital	L03273	Austin	68	10/26/06
Austin	Daughters of Charity Health Services of Austin DBA Seton Healthcare Network	L02896	Austin	90	10/20/06
Austin	Kleinfelder	L01351	Austin	53	10/24/06
Austin	St David's Healthcare DBA North Austin Medical Center	L04910	Austin	64	10/25/06
Austin	Texas Commission on Environmental Quality	L01715	Austin	38	10/17/06
Azle	Harris Methodist Northwest	L03230	Azle	28	10/18/06
Bay City	Celanese LTD Bay City Plant	L00246	Bay City	40	10/20/06
Baytown	Bayer Materials Science LLC	L01577	Baytown	61	10/19/06
Baytown	Jacinto MRE and Diagnostic Center	L04808	Baytown	14	10/26/06
Beaumont	E I Dupont De Nemours & CO Inc	L00517	Beaumont	74	10/25/06
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	34	10/17/06
Beaumont	Healthsouth Imaging Service of Beaumont	L05582	Beaumont	05	10/25/06
Beaumont	Lamar University	L04047	Beaumont	23	10/18/06
Bedford	Dallas Cardiology Associates PA DBA Heart Place West	L05448	Bedford	13	10/19/06
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	11	10/25/06
Bryan	St Joseph Regional Health Center	L00573	Bryan	67	10/13/06
College Station	Texas A&M University	L05683	College Station	04	10/25/06
College Station	Texas A&M University	L00448	College Station	126	10/25/06

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Cardinal Health	L02048	Dallas	120	10/23/06
Dallas	Cor Speciality Associates of North Texas PA DBA The Dallas Heart Group	L04694	Dallas	27	10/26/06
Dallas	Immuno Diagnostic Center Inc	L04365	Dallas	09	10/08/06
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	165	10/20/06
Dallas	North Texas Heart Center PA	L04608	Dallas	32	10/19/06
Dallas	Southern Methodist University	L00443	Dallas	22	10/13/06
Dallas	Valley View Surgery Center	L05686	Dallas	02	10/24/06
Deer Park	Oxy Vinyls LP	L03200	Deer Park	12	10/19/06
Donna	E I Dupont De Nemours and Company	L04566	Donna	06	10/25/06
Eagle Pass	Fort Duncan Medical Center	L05640	Eagle Pass	06	10/23/06
El Paso	Guillermo A Pinson MD PA	L04277	El Paso	13	10/18/06
El Paso	Western Refining Company LP	L02669	El Paso	16	10/19/06
Fannin	Coletto Creek Power LP DBA Coletto Creek Power Station	L02519	Fannin	18	10/19/06
Floresville	Wilson County Memorial Hospital District DBA Connally Memorial Medical Center	L03471	Floresville	16	10/24/06
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	19	10/25/06
Fort Worth	Cooks Children's Health Care System DBA Cook Children's Medical Center	L04587	Fort Worth	09	10/26/06
Fort Worth	Health Texas Provider Network DBA Baylor Specialty Associates of Fort Worth	L06000	Fort Worth	03	10/25/06
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	21	10/30/06
Fort Worth	Tarrant Diagnostic Imaging LLC	L0565	Fort Worth	02	10/17/06
Freeport	Brazos Pipe & Steel Fabricators Inc	L02186	Freeport	24	10/17/06
Greenville	L3 Communications Integrated Systems LP	L00856	Greenville	25	10/24/06
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	21	10/18/06
Houston	Bandy & Associates Inc	L05402	Houston	01	10/17/06
Houston	Betabatt Inc	L05961	Houston	01	10/26/06
Houston	Cardiology Associates	L05500	Houston	08	10/24/06
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	70	10/26/06
Houston	ConocoPhillips Company	L01634	Houston	47	09/19/06
Houston	Cypress Fairbanks Cardiology Associates	L04353	Houston	18	10/24/06
Houston	DMS Imaging DBA DMS Computed Imaging DMS Interim	L05594	Houston	06	10/19/06
Houston	Encysive Pharmaceuticals Inc	L04568	Houston	16	10/20/06
Houston	Hall Garcia Cardiology Associates	L05431	Houston	02	10/23/06
Houston	Introgen Therapeutics Inc	L04870	Houston	08	10/25/06
Houston	Kelsey Seybold Clinic PA	L00391	Houston	60	10/27/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	119	10/26/06
Houston	Nuclear Imaging Services LLC	L05775	Houston	20	10/19/06
Houston	Tanox Inc	L04094	Houston	12	10/26/06
Houston	Technical Industries Inc	L05705	Houston	01	10/30/06
Houston	Uson LP	L05669	Houston	01	10/25/06
Humble	Houston Heart Clinic	L05671	Houston	04	10/17/06
Irving	Columbia Medical Center of Las Colinas Inc DBA Las Colinas Medical Center	L05084	Irving	12	10/26/06
Jourdanton	San Miguel Electric Cooperative Inc	L02347	Jourdanton	25	10/26/06
Katy	Memorial City Cardiology Associates DBA Katy Cardiology Associates	L05713	Katy	06	10/24/06
Keene	OSCS Inc	L05813	Keene	04	10/17/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Kerrville	Sid Peterson Memorial Hospital	L01722	Kerrville	34	10/18/06
Lubbock	Cardinal Health	L02737	Lubbock	51	10/27/06
Lubbock	Convenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	02	10/24/06
Lubbock	Convenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	41	10/24/06
Lubbock	M Fawwaz Shoukfeh MD PA DBA Texas Cardiac Center	L05276	Lubbock	11	10/25/06
Lubbock	University Medical Center	L04719	Lubbock	88	10/30/06
Lufkin	Pickett Heart Clinic	L05681	Lufkin	03	10/17/06
Lufkin	The Heart Institute of East Texas PA	L04147	Lufkin	13	10/18/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	79	10/20/06
McAllen	Texas Oncology PA DBA South Texas Cancer Center at McAllen	L04880	McAllen	06	10/26/06
McAllen	Valley Nuclear Incorporated	L04521	McAllen	23	10/24/06
Midland	Permian Cardiology Associates	L05716	Midland	03	10/24/06
Midlothian	Holcim (Texas) LP	L05888	Midlothian	03	10/20/06
Mineral Wells	Perry Equipment Corporation	L003300	Mineral Wells	39	10/30/06
Mt Vernon	East Texas Medical Center Mt Vernon	L05954	Mt Vernon	04	10/26/06
Odessa	Premium Pipe Services LTD	L05644	Odessa	02	10/19/06
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L05140	Odessa	08	10/24/06
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	56	10/18/06
Pampa	Celanese LTD	L04210	Pampa	19	10/30/06
Pasadena	Cardiovascular Center PA	L04345	Pasadena	12	10/24/06
Plano	Columbia Medical Center of Plano Sub. LP DBA Medical Center of Plano	L02032	Plano	81	10/26/06
Plano	Columbia Medical Center of Plano Sub. LP DBA Medical Center of Plano	L02032	Plano	82	10/30/06
Plano	Plano Heart Center PA	L05673	Plano	02	10/31/06
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	07	10/19/06
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	22	10/20/06
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	86	10/17/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	43	10/23/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	44	10/30/06
San Antonio	Cancer Therapy and Research Center	L01922	San Antonio	87	10/24/06
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	92	10/18/06
San Antonio	Medi-Physics Inc DBA GE HealthCare	L04764	San Antonio	29	10/19/06
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	30	10/23/06
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	218	10/18/06
San Antonio	Radiation Oncology of San Antonio PA DBA Baptist Cancer Center	L05853	San Antonio	02	10/24/06
San Antonio	Salvatore A Barbaro III MD PA	L05680	San Antonio	05	10/17/06
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	55	10/25/06
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	56	10/27/06
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	151	10/25/06
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	152	10/27/06

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
San Antonio	Southwest General Hospital LLP DBA Southwest General Hospital	L02689	San Antonio	33	10/19/06
San Antonio	Texas Cancer Clinic	L05786	San Antonio	06	10/23/06
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	08	10/19/06
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	152	10/18/06
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	19	10/27/06
Sherman	Scela Inc DBA Cardinal Health	L05461	Sherman	11	10/24/06
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	33	10/23/06
Stafford	Burzynski Research Institute Inc	L02948	Stafford	20	10/17/06
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	23	10/25/06
Tatum	TXU Power Martin Lake Plant	L04593	Tatum	12	10/25/06
Texas City	Marathon Ashland Petroleum LLC	L04431	Texas City	23	10/30/06
The Woodlands	Sigma Genosys LP	L04555	The Woodlands	14	10/17/06
Tyler	Physician Reliance Network Inc DBA Tyler Cancer Center	L04788	Tyler	10	10/25/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	126	10/25/06
Vernon	American Electric Power - Power Service Company of Oklahoma	L03481	Vernon	18	10/30/06
Wichita Falls	North Texas Isotopes	L04810	Wichita Falls	12	10/24/06
Throughout Tx	Dyess-Peterson Testing	L01123	Amarillo	49	10/30/06
Throughout Tx	Amarillo Testing & Engineering Inc	L02658	Amarillo	15	10/23/06
Throughout Tx	Xcel Energy	L05238	Amarillo	09	10/26/06
Throughout Tx	Professional Service Industries Inc	L04947	Austin	15	10/24/06
Throughout Tx	Reinhart and Associates Inc	L03189	Austin	42	10/24/06
Throughout Tx	KXR Inspection Inc	L01074	Barker	102	10/26/06
Throughout Tx	ConocoPhillips Pipe Line Company DBA Petroleum Transportation	L02083	Bartlesville	19	10/26/06
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	96	10/27/06
Throughout Tx	Equistar Chemicals LP	L00064	Channelview	42	10/20/06
Throughout Tx	Professional Service Industries Incorporated	L04938	Clute	07	10/20/06
Throughout Tx	Texas A&M University	L05683	College Station	05	10/26/06
Throughout Tx	Fugro Consultants LP	L01474	Corpus Christi	29	10/26/06
Throughout Tx	APAC - Texas Inc	L04503	Dallas	11	10/25/06
Throughout Tx	Ed Bell Constriction Company	L05703	Dallas	01	10/30/06
Throughout Tx	Fugro South Inc	L03461	Dallas	24	10/27/06
Throughout Tx	GAF Materials Corporation	L03811	Dallas	13	10/23/06
Throughout Tx	Giles Engineering Associates Inc	L04919	Dallas	08	10/25/06
Throughout Tx	Lawrence Engineering	L05707	Dallas	01	10/30/06
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	33	10/27/06
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	19	10/30/06
Throughout Tx	Texas CMT Inc	L04766	Dallas	10	10/19/06
Throughout Tx	Numed Diagnostic Imaging	L02129	Denton	58	10/23/06
Throughout Tx	Millennium Engineers Group Inc	L05388	Edinburg	04	10/17/06
Throughout Tx	Sunbelt Laboratories Inc	L03926	El Paso	13	10/20/06
Throughout Tx	Alliance Engineering & Testing Services Inc	L05889	Fort Worth	02	10/24/06
Throughout Tx	City of Fort Worth Housing Department	L05420	Fort Worth	03	10/24/06
Throughout Tx	Freese and Nichols Inc	L04301	Fort Worth	11	10/23/06
Throughout Tx	Bonded Inspections Inc	L00693	Garland	74	10/24/06
Throughout Tx	Pre-Test Laboratory	L02524	Georgetown	13	10/19/06
Throughout Tx	Phoenix Surveys Inc	L04108	Graham	15	10/26/06
Throughout Tx	Northeastern Pavers Inc	L05665	Granbury	01	10/25/06

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Cobblestone Engineering Inc	L04789	Harlingen	04	10/26/06
Throughout Tx	Professional Service Industries Inc	L04944	Harlingen	08	10/24/06
Throughout Tx	Aviles Engineering Corporation	L03016	Houston	20	10/17/06
Throughout Tx	Geotest Engineering Inc	L02735	Houston	44	10/26/06
Throughout Tx	Halliburton Energy Service Inc	L00442	Houston	110	10/23/06
Throughout Tx	P L P S Inc	L04955	Houston	05	10/24/06
Throughout Tx	PACS Construction Laboratories and Testing Services	L05776	Houston	01	10/24/06
Throughout Tx	Protechnics	L04477	Houston	15	10/24/06
Throughout Tx	The Murillo Company	L01373	Houston	18	10/30/06
Throughout Tx	Ulrich Engineers Inc	L03950	Houston	08	10/23/06
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	82	10/19/06
Throughout Tx	Parkland Engineering and Testing Inc	L04089	Irving	06	10/27/06
Throughout Tx	City of Killeen	L04668	Killeen	06	10/26/06
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	226	10/17/06
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	130	10/27/06
Throughout Tx	Southern Services Inc DBA Southern Technical Services DBA Bix Testing Laboratories	L05270	Lake Jackson	46	10/27/06
Throughout Tx	Suntrac Services Inc	L03062	League City	25	10/26/06
Throughout Tx	Professional Service Industries Inc	L04941	Longview	07	10/20/06
Throughout Tx	City of Lubbock	L01735	Lubbock	31	10/26/06
Throughout Tx	American Surveys Inc	L02086	Manvel	14	10/26/06
Throughout Tx	S & T International Inc	L03652	Mauriceville	34	10/20/06
Throughout Tx	Professional Service Industries Inc	L03924	McKinney	21	10/20/06
Throughout Tx	L J Wireline Service	L05085	Midland	04	10/30/06
Throughout Tx	Murphrees Tool Company	L04195	Midland	05	10/20/06
Throughout Tx	Allen Inspection Service	L03003	Odessa	08	10/19/06
Throughout Tx	Big State X-Ray	L02693	Odessa	55	10/19/06
Throughout Tx	Big State X-Ray	L02693	Odessa	56	10/23/06
Throughout Tx	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	09	10/26/06
Throughout Tx	Pro Inspection Inc	L03906	Odessa	19	10/19/06
Throughout Tx	Panhandle Perforators Inc	L03065	Pampa	11	10/26/06
Throughout Tx	Conam Inspection & Engineering	L05010	Pasadena	115	10/16/06
Throughout Tx	Techorr USA LLC	L05972	Pasadena	11	10/19/06
Throughout Tx	Techorr USA LLC	L05972	Pasadena	12	10/30/06
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	26	10/30/06
Throughout Tx	Science Engineering LTD	L04677	Port Arthur	06	10/20/06
Throughout Tx	Amtech Roofing Consultants Inc	L04486	Richardson	07	10/24/06
Throughout Tx	Silva Contracting Company Inc	L05266	Richmond	02	10/24/06
Throughout Tx	Duinick Brothers Inc	L03957	Roanoke	12	10/30/06
Throughout Tx	Pipe Reclamation Inc	L04684	Robstown	09	10/26/06
Throughout Tx	All American Inspection Inc	L01336	San Antonio	56	10/19/06
Throughout Tx	Carrillo & Associates Inc	L05804	San Antonio	04	10/25/06
Throughout Tx	City of San Antonio	L05052	San Antonio	03	10/23/06
Throughout Tx	Professional Service Industries Inc	L04946	San Antonio	08	10/24/06
Throughout Tx	Raba-Kistner Consultants Inc ADA Raba-Kistner-Brytest Consultants Inc	L01571	San Antonio	57	10/18/06
Throughout Tx	Ruiz Testing Services Inc	L04948	San Antonio	17	10/17/06
Throughout Tx	GTC Inspection Inc	L02378	South Houston	95	10/16/06
Throughout Tx	General Electric Company DBA GE Healthcare	L05653	Spring Branch	04	10/24/06
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	135	10/27/06
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	77	10/30/06
Throughout Tx	Nutech Inc	L04274	Tyler	56	10/26/06
Throughout Tx	Quality Consultants	L05028	Tyler	04	10/30/06

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Invista Sarl	L00386	Victoria	80	10/27/06
Throughout Tx	Professional Service Industries Inc	L04943	Victoria	05	10/24/06

## RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Allied Testing Laboratories Inc	L00880	Houston	42	10/17/06
Longview	Texas Oncology PA DBA Longview Cancer Center	L05017	Longview	09	10/19/06
Mexia	Parkview Regional Hospital	L05144	Mexia	20	10/27/06
Midland	West Texas Medical Center LLC	L04729	Midland	15	10/18/06
Muenster	Muenster Hospital District DBA Muenster Memorial Hospital	L04887	Muenster	10	10/23/06
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	31	10/26/06
San Antonio	Methodist Healthcare System of San Antonio DBA The Gamma Knife Center	L05076	San Antonio	17	10/27/06
Texarkana	Christus Health Ark-La-Tex DBA Christus Saint Michael Health System	L04805	Texarkana	16	10/25/06
Victoria	Detar Hospital North	L03575	Victoria	20	10/23/06
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	71	10/20/06
Throughout Tx	Spencer J Buchanan Associates Inc	L01783	Bryan	16	10/18/06
Throughout Tx	New Tech Systems Inc	L05098	Midland	03	10/18/06
Throughout Tx	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	12	10/18/06

## TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Southwest Environmental Laboratories Inc	L03743	Houston	08	10/24/06
Throughout Tx	Southern Ecology Management Inc	L04711	Corpus Christi	07	10/17/06
Throughout Tx	Blaine T Williams Consulting Services	L05732	Dripping Springs	02	10/23/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200606120  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: November 8, 2006

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### Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits information from organizations and individuals interested in preparing and conducting a marketing campaign - including advertising, public relations, and media relations - for the Gulf Coast Workforce Board's regional system--The WorkSource. This system provides a variety of services for more than 95,000 businesses and 4.5 million residents of the 13-county area that includes Houston, Harris County, and the twelve surrounding counties. Prospective proposers may obtain a copy of the Request for Proposals online at [www.theworksource.org](http://www.theworksource.org) or by contacting Carol Kimmick or Mary Soria at (713) 627-3200 or by sending e-mail to [ckimmick@h-gac.com](mailto:ckimmick@h-gac.com). Responses are due at H-GAC offices by 12:00 noon on Monday, December 11, 2006. Late proposals will not be accepted. There will be no exceptions.

TRD-200606044

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: November 2, 2006



## Texas Department of Insurance

### Company Licensing

Application to change the name of ACE AMERICAN LLOYDS INSURANCE COMPANY to ACE AMERICAN INSURANCE COMPANY OF TEXAS, a foreign fire and/or casualty company. The home office is in Philadelphia, Pennsylvania.

Application to change the name of BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA to AIG CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Harrisburg, Pennsylvania.

Application for incorporation to the State of Texas by AIOI INSURANCE COMPANY OF AMERICA, a foreign fire and/or casualty company. The home office is in Schaumburg, Illinois.

Application for incorporation to the State of Texas by SEGUROS BANORTE-GENERALI, S.A. DE C.V., GRUPO FINANCIERO BANORTE, a foreign fire and/or casualty company. The home office is in Monterrey, Mexico.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200606117

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 8, 2006



### Miscellaneous Information, Notice of Proposed Amendments to the Texas Health Reinsurance System Plan of Operation

Notice is given to the public of proposed amendments to the Texas Health Reinsurance System (System) Plan of Operation pursuant to Insurance Code, §1501.306.

The System was created by the Legislature in 1993 to engage in the reinsurance of small employer group health benefit plans issued by members of the System. Insurance Code, §1501.306 requires the Board of Directors to adopt a plan of operation. The Plan of Operation becomes effective on the written approval of the Commissioner. The

Commissioner approved the original Plan of Operation on September 6, 1995. Section 1501.306 provides that proposed amendments to the Plan of Operation be submitted to the Commissioner; and the Commissioner, after notice and hearing, may approve them.

The System Board of Directors considered a number of changes to the Plan of Operation at its June 15, 2006 meeting and its September 19, 2006 meeting. The Board, at its September 19, 2006 meeting, voted to recommend approval by the Commissioner of the amendments to the Plan of Operation. Proposed Plan of Operation amendments favorably recommended to the Commissioner by the Board include both substantive changes to various operational activities of the System set out in the Plan document, as well as a number of nonsubstantive but necessary conforming changes to Insurance Code references, and to certain defined terms and references, based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

A full text copy of the Plan of Operation in its entirety with all proposed amendments is available by electronic mail, facsimile transmission, or USPS from Nick Hoelscher, Commissioner's representative. Mr. Hoelscher may be contacted by mail at the Texas Department of Insurance, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104; by telephone at (512) 322-4355; or by e-mail at [nick.hoelscher@tdi.state.tx.us](mailto:nick.hoelscher@tdi.state.tx.us).

The Commissioner will consider written comments on the proposal, provided they are submitted in writing no later than 5:00 p.m. on December 8, 2006 to Nick Hoelscher, Staff Attorney, Legal Division, Texas Department of Insurance, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the proposed amended Plan of Operation in a public hearing under Docket Number 2662, scheduled for 10:00 a.m. on November 29, 2006, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

TRD-200606106

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 7, 2006



### Notice of Public Meeting

Rates of Assessment for Expenses of Examination of Foreign and Domestic Insurance Companies, Costs of Examinations and Investigations and General Administrative Expenses for the Regulation of Insurance Premium Finance Companies, and the Assessment of Insurance Maintenance Taxes and Fees.

Article 1.16, §651.006, and Subtitles C and D of Title 3 of the Texas Insurance Code and Chapters 403, 405, and 407A of the Labor Code require the Commissioner of Insurance to determine rates for: the assessment for expenses of examination of foreign and domestic insurance companies; the assessment to cover the cost of examinations, investigations and general administrative expenses for the regulation of insurance premium finance companies; and the assessment of insurance maintenance taxes and fees.

General Counsel of the Texas Department of Insurance will preside over an open meeting at 9:30 am on November 30, 2006 in Room 100 of the William P. Hobby State Office Building 333 Guadalupe Street in Austin, Texas, to receive comments and questions concerning the projected rates of assessment. Copies of the projected rates of assessment may be obtained from the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas during regular business hours.

Written comments on the projected rates of assessment may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104 before the meeting. An additional copy of the comments must be submitted to Joe Meyer, Deputy Chief Financial Officer, P.O. Box 149104, MC 108-3A, Austin, TX. Interested persons may also present written and/or oral comments related to the rates of assessment at the open meeting.

Any request for hearing should be submitted separately and in writing no later than December 5, 2006. The written request should be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104.

TRD-200606118  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 8, 2006

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of 1-2-1 Claims, Inc., a domestic third party administrator. The home office is HELOTES, TEXAS.

Application to change the name in Texas of MEMORIAL ADMINISTRATORS, L.L.C., to MEMORIAL ADMINISTRATORS, L.L.C. (using the assumed name of TEXAS MEMORIAL ADMINISTRATORS, L.L.C.) a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200606123  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: November 8, 2006

## Texas State Library and Archives Commission

### Request for Consulting Services

RFO #306-07-8311

The Texas State Library and Archives Commission (TSLAC) administers federal Library Services and Technology Act (LSTA) grant funds for libraries in Texas. LSTA requires states to report on their five-year plans prior to the end of each five-year plan. To meet this mandate TSLAC intends to seek professional consulting services to evaluate its current five-year plan. The result of this study will provide valuable information to TSLAC to prepare for its next five-year plan (2008-2012). The TSLAC goal that pertains to activities conducted under LSTA requirements is: To improve the availability and delivery of library and information services for all Texans.

TSLAC expects to make an award not to exceed \$60,000.00.

A complete copy of the RFO will be posted on or before November 10, 2006 on the Texas Building and Procurement Commission, Electronic State Business Daily (ESBD) located at: <http://esbd.tbpc.state.tx.us/>.

Please e-mail any questions with RFO #306-07-8311 to: [purchase@tsl.state.tx.us](mailto:purchase@tsl.state.tx.us). All questions must be received no later than December 4, 2006. TSLAC will post all questions and answers on December 12, 2006 by the close of the business day. For further information, contact: Charlotte Craig, Senior Purchaser ((512) 463-5443).

TRD-200606094  
Edward Seidenberg  
Assistant State Librarian  
Texas State Library and Archives Commission  
Filed: November 7, 2006

## Texas Lottery Commission

### Instant Game Number 747 "The Price is Right"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 747 is "THE PRICE IS RIGHT". The play style for game WHAT'S UP FOR BID is "key number match". The play style for game PLINKO is "key symbol match". The play style for game SPIN THE WHEEL is "key number match". The play style for game SHOWCASE SHOWDOWN is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 747 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 747.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$25,000, \$5,000, \$5,100, \$5,200, \$5,300, \$5,400, \$5,500, \$5,600, \$5,700, \$5,800, \$5,900, \$6,000, \$6,100, \$6,200, \$6,300, \$6,400, \$6,500, \$6,600, \$6,700, \$6,800, \$6,900, \$7,000, \$7,100, \$7,200, \$7,300, \$7,400, \$7,500, \$7,600, \$7,700, 1 CHIP SYMBOL, 2 CHIP SYMBOL, 3 CHIP SYMBOL, 4 CHIP SYMBOL, 5 CHIP SYMBOL, 6 CHIP SYMBOL, 7 CHIP SYMBOL, 8 CHIP SYMBOL, 9 CHIP SYMBOL, \$0.00, ARROW SYMBOL, \$15,000, \$15,100, \$15,200, \$15,300, \$15,400, \$15,500, \$15,600, \$15,700, \$15,800, \$15,900, \$16,000, \$16,100, \$16,200, \$16,300, \$16,400, \$16,500, \$16,600, \$16,700, \$16,800, \$16,900, \$17,000, \$17,100, \$17,200, \$17,300, \$17,400, \$17,500, \$17,600, \$17,700, \$17,800, \$17,900, \$18,000, \$18,100, \$18,200, \$18,300, \$18,400, \$18,500, \$18,600, \$18,700, \$18,800, \$18,900, \$19,000, \$19,100, \$19,200, \$19,300, \$19,400, \$19,500, \$19,600, \$19,700, \$19,800, \$19,900, \$20,000, \$20,100, \$20,200, \$20,300, \$20,400, \$20,500, \$20,600, \$20,700, \$20,800, and \$20,900.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 747 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$25,000	25 THOU
\$5,000	FIVTHOU
\$5,100	5THOU100
\$5,200	5THOU200
\$5,300	5THOU300
\$5,400	5THOU400
\$5,500	5THOU500
\$5,600	5THOU600
\$5,700	5THOU700
\$5,800	5THOU800
\$5,900	5THOU900
\$6,000	SIXTHOU
\$6,100	6THOU100
\$6,200	6THOU200
\$6,300	6THOU300
\$6,400	6THOU400
\$6,500	6THOU500
\$6,600	6THOU600
\$6,700	6THOU700
\$6,800	6THOU800
\$6,900	6THOU900
\$7,000	SVNTHOU
\$7,100	7THOU100
\$7,200	7THOU200
\$7,300	7THOU300
\$7,400	7THOU400
\$7,500	7THOU500
\$7,600	7THOU600
\$7,700	7THOU700
1 CHIP SYMBOL	
2 CHIP SYMBOL	
3 CHIP SYMBOL	
4 CHIP SYMBOL	
5 CHIP SYMBOL	
6 CHIP SYMBOL	
7 CHIP SYMBOL	
8 CHIP SYMBOL	
9 CHIP SYMBOL	

\$0.00	ZERO\$
ARROW SYMBOL	
\$15,000	FTNTHOU
\$15,100	15THO100
\$15,200	15THO200
\$15,300	15THO300
\$15,400	15THO400
\$15,500	15THO500
\$15,600	15THO600
\$15,700	15THO700
\$15,800	15THO800
\$15,900	15THO900
\$16,000	SXNTHO
\$16,100	16THO100
\$16,200	16THO200
\$16,300	16THO300
\$16,400	16THO400
\$16,500	16THO500
\$16,600	16THO600
\$16,700	16THO700
\$16,800	16THO800
\$16,900	16THO900
\$17,000	SVTNTHO
\$17,100	17THO100
\$17,200	17THO200
\$17,300	17THO300
\$17,400	17THO400
\$17,500	17THO500
\$17,600	17THO600
\$17,700	17THO700
\$17,800	17THO800
\$17,900	17THO900
\$18,000	EGTNTHO
\$18,100	18THO100
\$18,200	18THO200
\$18,300	18THO300
\$18,400	18THO400
\$18,500	18THO500
\$18,600	18THO600
\$18,700	18THO700
\$18,800	18THO800
\$18,900	18THO900
\$19,000	NTNTHO
\$19,100	19THO100
\$19,200	19THO200
\$19,300	19THO300
\$19,400	19THO400
\$19,500	19THO500
\$19,600	19THO600

\$19,700	19THO700
\$19,800	19THO800
\$19,900	19THO900
\$20,000	TWYTHO
\$20,100	20THO100
\$20,200	20THO200
\$20,300	20THO300
\$20,400	20THO400
\$20,500	20THO500
\$20,600	20THO600
\$20,700	20THO700
\$20,800	20THO800
\$20,900	20THO900

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 747 - 1.2E

CODE	PRIZE
TWO	\$2.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$2.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize--A prize of \$30.00, \$50.00, \$100, or \$500.

I. High-Tier Prize--A prize of \$1,000 or \$25,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (747), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 747-0000001-001.

L. Pack--A pack of "THE PRICE IS RIGHT" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of tickets 125 will be revealed on the back of the pack. There will be no breaks between the tickets in a pack. Every other book will reverse, i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "THE PRICE IS RIGHT" Instant Game No. 747 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "THE PRICE IS RIGHT" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. For the game WHAT'S UP FOR BID, if a player's YOUR BID play symbol matches the ACTUAL RETAIL PRICE play symbol in the same game across, the player wins the PRIZE shown for that game. For the game PLINKO, the player scratches the PLINKO

board to reveal YOUR CHIPS play symbols and if a player reveals two matching chips play symbols in the same column, the player wins the corresponding prize below that column. For the game SPIN THE WHEEL, the player scratches off the wheel to reveal the prize amounts and wins the prize shown at the arrow. For the game SHOWCASE SHOWDOWN, if a player matches YOUR BID play symbol to the ACTUAL PRICE play symbol within the same SHOWCASE, the player wins the PRIZE shown for that SHOWCASE. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to nine (9) times on a ticket.

C. What's Up for Bid: The YOUR BID value in one game will never equal the YOUR BID value of another game on the same ticket.

D. What's Up for Bid: The YOUR BID value of one game will never match the ACTUAL RETAIL PRICE value of a different game.

E. What's Up for Bid: For a non-winning game, the point spread difference between the YOUR BID value and the ACTUAL RETAIL PRICE will be between \$100 and \$1,000 inclusive.

F. What's Up for Bid: The YOUR BID and ACTUAL RETAIL PRICE values will be random numbers between \$5,000 and \$7,700 inclusive, in \$100 increments.

G. What's Up for Bid: The ACTUAL RETAIL PRICE value of one game will not equal the ACTUAL RETAIL PRICE of another game on the same ticket.

H. What's Up for Bid: Non-winning prize symbols will not match winning prize symbols.

I. What's Up for Bid: You can win up to four (4) times in the play area.

J. What's Up for Bid: There will be at least one (1) near win per ticket, except for tickets winning four (4) times in this area. A near win occurs when a YOUR BID value whose numerical value is plus or minus one hundred dollars (\$100) to two hundred dollars (\$200) from its corresponding ACTUAL RETAIL PRICE value.

K. Plinko: There will be two (2) chip symbols in each column.

L. Plinko: On winning tickets, the two chip symbols in at least one column will have matching numbers inside.

M. Plinko: You can win up to two (2) times in this play area.

N. Plinko: On non-winning tickets, the two chip symbols in each column will not match.

O. Plinko: The following prize legend will appear beneath the PLINKO play area (from left to right): \$2, \$10, \$30, \$50, \$1,000, \$100, \$20, \$10, and \$5.

P. Spin the Wheel: Non-winning prize symbols will not match a winning prize symbol on a ticket.

Q. Spin the Wheel: The zero dollar (\$0) prize symbol will appear one (1) time on each ticket.

R. Spin the Wheel: The arrow symbol will appear on the left side of the prize symbols.

S. Spin the Wheel: All non-winning prize symbols will be unique.

T. Spin the Wheel: The arrow symbol will appear once on each ticket.

U. Spin the Wheel: A ticket will win the prize directly to the right of the arrow.

V. Spin the Wheel: On a non-winning ticket, the arrow will appear directly to the left of the zero dollar (\$0) prize symbol.

W. Spin the Wheel: You can only win once in this play area.

X. Showcase Showdown: The YOUR BID value of one SHOWCASE will not match the YOUR BID value or the ACTUAL PRICE of the other SHOWCASE.

Y. Showcase Showdown: The ACTUAL PRICE of one SHOWCASE will not match the ACTUAL PRICE or the YOUR BID of the other SHOWCASE.

Z. Showcase Showdown: Non-winning prize symbols will not match winning prize symbols.

AA. Showcase Showdown: Non-winning prize symbols will not match.

BB. Showcase Showdown: Winning YOUR BID positions will be distributed evenly among the two (2) positions.

CC. Showcase Showdown: You can win up to two (2) times in this play area.

DD. Showcase Showdown: There will be at least one (1) near win per game, except for tickets winning twice in this area. A near win occurs when a YOUR BID numerical value is plus or minus one hundred dollars (\$100) to two hundred dollars (\$200) from an ACTUAL PRICE in the same showcase.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "THE PRICE IS RIGHT" Instant Game prize of \$2.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE PRICE IS RIGHT" Instant Game prize of \$1,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE PRICE IS RIGHT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from "THE PRICE IS RIGHT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from "THE PRICE IS RIGHT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 747. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 747 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$2</b>	<b>1,411,200</b>	<b>7.14</b>
<b>\$5</b>	<b>645,120</b>	<b>15.63</b>
<b>\$10</b>	<b>241,920</b>	<b>41.67</b>
<b>\$20</b>	<b>80,640</b>	<b>125.00</b>
<b>\$30</b>	<b>23,100</b>	<b>436.36</b>
<b>\$50</b>	<b>16,800</b>	<b>600.00</b>
<b>\$100</b>	<b>7,896</b>	<b>1,276.60</b>
<b>\$500</b>	<b>60</b>	<b>168,000.00</b>
<b>\$1,000</b>	<b>16</b>	<b>630,000.00</b>
<b>\$25,000</b>	<b>10</b>	<b>1,008,000.00</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.15. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 747 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 747, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200606055

Kimberly Kiplin

General Counsel

Texas Lottery Commission

Filed: November 3, 2006



### Instant Game Number 770 "Queen of Hearts Tripler"

#### 1.0. Name and Style of Game.

A. The name of Instant Game Number 770 is "QUEEN OF HEARTS TRIPLER." The play style is "beat score with bonus spot."

#### 1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 770 shall be \$3.00 per ticket.

#### 1.2. Definitions in Instant Game Number 770.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$3.00, \$6.00, \$10.00, \$15.00, \$30.00, \$50.00, \$100, \$500, \$3,000, \$35,000,

2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL, A HEART SYMBOL, 2 SPADE

SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, K SPADE SYMBOL and A SPADE SYMBOL.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 770 - 1.2D

PLAY SYMBOL	CAPTION
\$3.00	THREE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$15.00	FIFTN
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$3,000	THR THOU
\$35,000	35 THOU
2 DIAMOND SYMBOL	2DMD
3 DIAMOND SYMBOL	3DMD
4 DIAMOND SYMBOL	4DMD
5 DIAMOND SYMBOL	5DMD
6 DIAMOND SYMBOL	6DMD
7 DIAMOND SYMBOL	7DMD
8 DIAMOND SYMBOL	8DMD
9 DIAMOND SYMBOL	9DMD
10 DIAMOND SYMBOL	10DMD
J DIAMOND SYMBOL	JDMD
K DIAMOND SYMBOL	KDMD
A DIAMOND SYMBOL	ADMD
2 CLUB SYMBOL	2CLB
3 CLUB SYMBOL	3CLB
4 CLUB SYMBOL	4CLB
5 CLUB SYMBOL	5CLB
6 CLUB SYMBOL	6CLB
7 CLUB SYMBOL	7CLB
8 CLUB SYMBOL	8CLB
9 CLUB SYMBOL	9CLB
10 CLUB SYMBOL	10CLB
J CLUB SYMBOL	JCLB
K CLUB SYMBOL	KCLB
A CLUB SYMBOL	ACLB
2 HEART SYMBOL	2HRT
3 HEART SYMBOL	3HRT
4 HEART SYMBOL	4HRT
5 HEART SYMBOL	5HRT
6 HEART SYMBOL	6HRT
7 HEART SYMBOL	7HRT
8 HEART SYMBOL	8HRT
9 HEART SYMBOL	9HRT
10 HEART SYMBOL	10HRT
J HEART SYMBOL	JHRT
Q HEART SYMBOL	QHRT
K HEART SYMBOL	KHRT



A HEART SYMBOL	AHRT
2 SPADE SYMBOL	2SPD
3 SPADE SYMBOL	3SPD
4 SPADE SYMBOL	4SPD
5 SPADE SYMBOL	5SPD
6 SPADE SYMBOL	6SPD
7 SPADE SYMBOL	7SPD
8 SPADE SYMBOL	8SPD
9 SPADE SYMBOL	9SPD
10 SPADE SYMBOL	10SPD
J SPADE SYMBOL	JSPD
K SPADE SYMBOL	KSPD
A SPADE SYMBOL	ASPD

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation

purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 770 - 1.2E

CODE	PRIZE
THR	\$3.00
SIX	\$6.00
TEN	\$10.00
FTN	\$15.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$3.00, \$6.00, \$10.00 or \$15.00.

H. Mid-Tier Prize--A prize of \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize--A prize of \$3,000 or \$35,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (770), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 770-0000001-001.

L. Pack--A pack of "QUEEN OF HEARTS TRIPLER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one. Tickets 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "QUEEN OF HEARTS TRIPLER" Instant Game Number 770 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "QUEEN OF HEARTS TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 25 Play Symbols. If YOUR card play symbol is higher than the DEALER'S card play symbol in a single GAME, the player wins PRIZE shown for that GAME. If a player reveals a "Queen of Hearts" play symbol, the player wins TRIPLE the PRIZE shown for that GAME

instantly. ACES are high. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 25 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 25 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 25 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 25 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. A ticket can win up to 9 times as indicated by the prize structure.

C. Non-winning configurations to vary ticket to ticket and from pack to pack.

D. YOUR Card/DEALER'S Card Play Area: A game card will not appear more than once on a ticket simulating a true deck of 52 cards, that is TWO to ACE, in each of the four suits (hearts, diamonds, clubs and spades).

E. YOUR Card/DEALER'S Card Play Area: ACE is considered to be a high card only.

F. YOUR Card/DEALER'S Card Play Area: Players can win up to eight times in this play area.

G. YOUR Card/DEALER'S Card Play Area: A ticket will win when the YOUR card is higher in value than the DEALER'S card.

H. YOUR Card/DEALER'S Card Play Area: The "2" card symbol will never appear as a YOUR card.

I. YOUR Card/DEALER'S Card Play Area: A non-winning prize will not appear more than twice on winning and non winning tickets.

J. YOUR Card/DEALER'S Card Play Area: There will be no ties between the YOUR card symbol and the DEALER'S card symbol in a game.

K. YOUR Card/DEALER'S Card Play Area: The "ACE" card symbol will never appear as a DEALER'S card.

L. YOUR Card/DEALER'S Card Play Area: The same two card values (i.e. 2 Heart Symbol and 5 Diamond Symbol in one game and a 5 Diamond Symbol and a 2 Heart Symbol in another game) will not appear together, in any order, in more than one GAME.

M. YOUR Card/DEALER'S Card Play Area: The Q Heart Symbol card will only appear as per the prize structure.

N. YOUR Card/DEALER'S Card Play Area: The Q Heart Symbol card will never appear as a DEALER's card.

O. YOUR Card/DEALER'S Card Play Area: On tickets winning with the Q Heart Symbol, the DEALER'S card will always be lower than the Q Heart Symbol.

P. BONUS SPOT: On tickets winning with the BONUS SPOT, a "Hearts" card symbol will appear.

Q. BONUS SPOT: On non-winning tickets, any of the 3 symbols other than the Hearts symbol may appear.

#### 2.3. Procedure for Claiming Prizes.

A. To claim a "QUEEN OF HEARTS TRIPLER" Instant Game prize of \$3.00, \$6.00, \$10.00, \$15.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "QUEEN OF HEARTS TRIPLER" Instant Game prize of \$3,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "QUEEN OF HEARTS TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "QUEEN OF HEARTS TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "QUEEN OF HEARTS TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game Number 770. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 770 - 3.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	576,000	10.42
\$6	648,000	9.26
\$10	48,000	125.00
\$15	96,000	62.50
\$30	50,350	119.17
\$50	24,250	247.42
\$100	10,250	585.37
\$500	550	10,909.09
\$3,000	25	240,000.00
\$35,000	7	857,142.86

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.13. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 770 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 770, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200606086

Kimberly Kiplin

General Counsel

Texas Lottery Commission

Filed: November 7, 2006



Instant Game Number 774 "\$1,000,000 Vegas Luck"

1.0 Name and Style of Game.

A. The name of Instant Game No. 774 is "\$1,000,000 VEGAS LUCK". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 774 shall be \$25.00 per ticket.

1.2 Definitions in Instant Game No. 774.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1 CHIP SYMBOL, 2 CHIP SYMBOL, 3 CHIP SYMBOL, 4 CHIP SYMBOL, 5 CHIP SYMBOL, 6 CHIP SYMBOL, 7 CHIP SYMBOL, 8 CHIP SYMBOL, 9 CHIP SYMBOL, 10 CHIP SYMBOL, 11 CHIP SYMBOL, 12 CHIP SYMBOL, 13 CHIP SYMBOL, 14 CHIP SYMBOL, 15 CHIP SYMBOL, 16 CHIP SYMBOL, 17 CHIP SYMBOL, 18 CHIP SYMBOL, 19 CHIP SYMBOL, 20 CHIP SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$25.00, \$40.00, \$50.00, \$60.00, \$100, \$200, \$250, \$500, \$10,000, and \$1MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 774 - 1.2D

PLAY SYMBOL	CAPTION
1 CHIP SYMBOL	ONE
2 CHIP SYMBOL	TWO
3 CHIP SYMBOL	THR
4 CHIP SYMBOL	FOR
5 CHIP SYMBOL	FIV
6 CHIP SYMBOL	SIX
7 CHIP SYMBOL	SVN
8 CHIP SYMBOL	EGT
9 CHIP SYMBOL	NIN
10 CHIP SYMBOL	TEN
11 CHIP SYMBOL	ELV
12 CHIP SYMBOL	TLV
13 CHIP SYMBOL	TRN
14 CHIP SYMBOL	FTN
15 CHIP SYMBOL	FFN
16 CHIP SYMBOL	SXN
17 CHIP SYMBOL	SVT
18 CHIP SYMBOL	ETN
19 CHIP SYMBOL	NTN
20 CHIP SYMBOL	TWY
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY

21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$4.00	FOUR\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$60.00	SIXTY
\$100	ONE HUND
\$200	TWO HUND
\$250	TWO FTY
\$500	FIV HUND
\$10,000	10 THOU
\$1MILL SYMBOL	ONE MILL

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Mid-Tier Prize - A prize of \$25.00, \$40.00, \$60.00, \$100, \$250 or \$500.

G. High-Tier Prize - A prize of \$2,000, \$10,000 or \$1,000,000.

H. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (774), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 774-0000001-001.

J. Pack - A pack of "\$1,000,000 VEGAS LUCK" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1,000,000 VEGAS LUCK" Instant Game No. 774 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A

prize winner in the "\$1,000,000 VEGAS LUCK" Instant Game is determined once the latex on the ticket is scratched off to expose 69 (sixty-nine) Play Symbols. In GAME 1, if any of the player's YOUR CHIPS play symbols match the HOUSE CHIP play symbol, the player wins the PRIZE shown for that chip. In GAME 2, if the player's YOUR DICE play symbols total 7 or 11 within a roll, the player wins the PRIZE shown for that roll. In GAME 3, if any of the player's YOUR NUMBERS play symbols match either of the ROULETTE NUMBERS play symbols, the player wins the PRIZE shown for that number. In GAME 4, if any of the player's YOUR NUMBERS play symbols match either of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 69 (sixty-nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 69 (sixty-nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 69 (sixty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 69 (sixty-nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. GAME 1: No duplicate non-winning YOUR CHIPS play symbols.

C. GAME 1: No duplicate non-winning prize symbols in this game.

D. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR CHIPS play symbol (i.e. 5 and \$5).

E. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

F. GAME 2: No duplicate non-winning prize symbols in this game.

G. GAME 2: No duplicate rolls in any order.

H. GAME 2: No four or more matching play symbols in a game.

I. GAME 3: No duplicate non-winning YOUR NUMBERS play symbols.

J. GAME 3: No duplicate ROULETTE NUMBERS play symbols.

K. GAME 3: No duplicate non-winning prize symbols in this game.

L. GAME 3: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

M. GAME 3: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

N. GAME 4: No duplicate WINNING NUMBERS play symbols.

O. GAME 4: No duplicate non-winning YOUR NUMBERS play symbols.

P. GAME 4: No more than 3 matching non-winning prize symbols in this game.

Q. GAME 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

R. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 VEGAS LUCK" Instant Game prize of \$25.00, \$40.00, \$60.00, \$100, \$250 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$40.00, \$60.00, \$100, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 VEGAS LUCK" Instant Game prize of \$2,000 or \$10,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$1,000,000 VEGAS LUCK" top level prize of \$1,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$1,000,000 VEGAS LUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1,000,000 VEGAS LUCK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1,000,000 VEGAS LUCK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 774. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 774 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$25	720,000	4.17
\$40	360,000	8.33
\$60	180,000	16.67
\$100	32,375	92.66
\$250	8,000	375.00
\$500	2,375	1,263.16
\$2,000	250	12,000.00
\$10,000	25	120,000.00
\$1,000,000	4	750,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.30. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 774 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 774, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200606115  
Kimberly Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 8, 2006



## North Central Texas Council of Governments

### Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to perform a Tower 55 Rail Reliever Study. This study will include development of alternatives and feasibilities for rail improvements at Tower 55 which is located at the junction of the Union Pacific and Burlington Northern Santa Fe Railroads near downtown Fort Worth. Issues to be addressed in the study include track improvements and additions and rail/roadway interface for all existing and planned facilities. The focus of the study will be on development of measures of effectiveness in addition to a cost-benefit analysis on all reasonable alternatives to include mo-

bility, safety, security, and air quality impacts. Engineering services are anticipated for this effort.

### Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, January 12, 2007, to Greg Royster, Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that, in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200606107  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: November 8, 2006

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## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 30, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33447 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33447.

TRD-200606047

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 2, 2006

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### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 30, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA) as follows:

Project Title and Number: Application of Charter Communications VI, LLC d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33448 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33448.

TRD-200606046

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 2, 2006

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### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 2, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Rapid Communications LLC for a State-Issued Certificate of Franchise Authority, Project Number 33459 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the City Limits of Valley Mills, Big Wells, Brackerville, Castroville, Coleman, Haskell, Johnson City, Kosse, Midway, Normangee, O'Donnell, Pleasanton, Richland Springs, Shiner, Stamford, Tahoka and Willis Point within the State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33459.

TRD-200606091

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 7, 2006

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### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 30, 2006, Computer Network Technology Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60665. Applicant intends to reflect a change in ownership/control to Brocade Communications Systems, Inc., and a name change to Brocade Services Corporation.

The Application: Application of Computer Network Technology Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33444.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 22, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33444.

TRD-200606041

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 1, 2006

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## Stephen F. Austin State University

### Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Dr. Donnya Stephens, 14806 Ashland Pines Lane, Humble, TX 77398. The original contract was in the sum of \$7,500 plus expenses. The contract will be renewed beginning on the date of the final signature and will continue through August 31, 2007, with a total amount not to exceed \$32,500, including travel and per diem.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Barbara Davis, Director of the GearUP Project, Stephen F. Austin State University, P.O. Box 13018, SFA Station, Nacogdoches, TX 75962; e-mail: davisbarba@sfasu.edu; phone (936) 468-1813.

TRD-200606048

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: November 2, 2006



## Texas A&M University, Board of Regents

Public Notice Issued November 1, 2006 (Announcement of Finalist for the Position of Chancellor of the Texas A&M University System)

Pursuant to Section 552.123, Texas Government Code, the following candidate is the finalist for the position of Chancellor of The Texas A&M University System. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Michael D. McKinney

TRD-200606040

Vickie Burt Spillers

Executive Secretary

Texas A&M University, Board of Regents

Filed: November 1, 2006



## Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Palacios, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Palacios, Palacios Municipal Airport. TxDOT CSJ No. 0713PALCS. Scope: Provide engineering/design services for airport drainage evaluation, drainage on Runway 17-35; rehabilitate culverts and inlets; spall and crack repair on Runway 17-35; joint sealant Runway 17-35; reduce width and mark Runway 17-35; and security fence at the Palacios Municipal Airport.

Future work items for engineering/design services within the next five years may include drainage repairs and upgrades and pavement repairs.

The proposal should address a technical approach for the current and future scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

The **DBE** goal is set at 0%. TxDOT Project Manager is Ed Oshinski.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Palacios Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/forms/aviation/550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

### Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 12, 2006, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Ed Oshinski, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200606051

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 3, 2006



## Aviation Division - Request for Proposal for Aviation Engineering Services

The City of New Braunfels, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of New Braunfels, New Braunfels Municipal Airport. TxDOT CSJ No. 0715NBRNF. Scope: Provide engineering/design services to construct a taxiway and apron for hangars.

The DBE goal is set at 7%. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "New Braunfels Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/forms/aviation/550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

**Please note:**

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 12, 2006, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200606052  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: November 3, 2006



**Aviation Division - Request for Proposal for Professional Services**

The Kerrville/Kerr County Joint Airport Board, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. The TxDOT Aviation Division will

solicit and receive proposals for professional services as described below:

**Airport Sponsor:** Kerrville/Kerr County Joint Airport Board Kerrville Municipal/Louis Schreiner Field. TxDOT CSJ No. 0715KERV.L. **Scope:** Prepare a business plan to provide an overview analysis of the airport addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis and risk assessment; provide an assessment of business/economic development opportunities; recommend a five-year strategic course of action to pursue development and to address issues at the Kerrville Municipal/Louis Schreiner Field Airport.

The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/forms/aviation/551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion.

**PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.** **ATTENTION:** To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

**Please note:**

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 12, 2006, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200606054  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: November 3, 2006



## Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, December 14, 2006, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, or (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Highway project selection information will be available at the department's Riverside Annex, 118 E. Riverside Drive, Bldg. 118, Room 2C-5, Austin, Texas, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: James L. Randall, P.E., Director, Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on January 19, 2007.

TRD-200606053

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 3, 2006

## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Alamo, 420 N. Tower Road, Alamo, Texas 78516, received October 3, 2006, application for financial assistance in the amount of \$10,160,000 from the Clean Water State Revolving Fund.

City of Brownsville, P.O. Box 911, 1001 E. Elizabeth Street, Brownsville, Texas 78520, received October 25, 2006, application for an increase in financial assistance in the amount of \$1,718,352 from the Economically Distressed Areas Program of the Texas Water Development Funds.

The Rensselaerville Institute, 1418 Beech Street, Suite 119A, McAllen, Texas 78501, received July 24, 2006, application for a grant in the amount of \$35,021 from the Colonia Self Help Account.

City of Houston, P.O. Box 1562, Houston, Texas 77251-1562, received September 7, 2006, application for financial assistance in the amount of \$61,545,000 from the Clean Water State Revolving Fund.

Greater Texoma Utility Authority, on behalf of the Cities of Howe, Van Alstyne, Anna and Melissa, 5100 Airport Drive, Denison, Texas 75020, received August 29, 2006, application for financial assistance in the amount of \$6,520,000 from the Texas Water Development Funds.

City of Rio Grande City, City Hall at 101 S. Washington Street, Rio Grande City, Texas 78582-4415, received March 31, 2006, application for financial assistance in the amount of \$20,900,000 from both the Drinking Water State Revolving Fund and the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Victoria County Water Control and Improvement District No. 2, P.O. Box 238, Placedo, Texas 77977, received October 2, 2006, application for financial assistance in the amount of \$250,000 from the Texas Water Development Funds.

TRD-200606128

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: November 8, 2006

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).